

Exhibit 70

From: J. Ezra Merkin
Sent: Mon, 15 Mar 2004 23:26:31
GMT
To: AUTERA, MIKE
Subject: Ariel/Amber and Ascot

-----Original Message-----

From: Igolnikov, Roman [mailto:RI@UBPAM.COM]
Sent: Saturday, March 13, 2004 2:08 PM
To: J. Ezra Merkin
Subject: Ariel/Amber and Ascot

Ezra,

Just in case I attached the latest letter from the other feeder into Bernie. I appreciate very much your effort in putting our meeting together. I feel fortunate having been able to develop friendship with you that was clearly the catalyst for setting up the meeting.

As for Amber and Ariel, I would like to have the following info:

- presentation of the investment strategy, specification of assets (not just distressed debt, but what kind of debt - public/private, snior/subordinated, bank debt, stage of bunkruptcy, geography), themes in the portfolio, typical number of trades in the portfolio, rate/return objective - for the fund and for each of the themes, risk management (position limits, stop losses);
- monthly track record;
- terms (fees, liquidity, share classes);
- third party providers (primarily administrator and its role);
- AUM (both domestic and offshore);
- your assessment of the opportunity (current level of credit spreads and falling default rates);
- anything special about the funds.

Thanks a lot,

noble

Fairfield Sentry Fund

Semi-Annual Update – Sentry Class A

Fourth Quarter, 2003

January 28, 2004

Dear Investor:

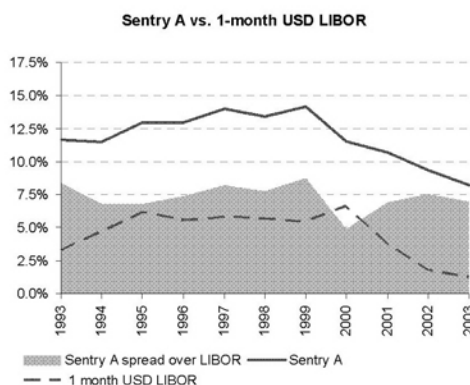
Fairfield Greenwich (Bermuda) Ltd. ("FGBL"), the Investment Manager of Fairfield Sentry Ltd. ("Sentry," or the "Fund"), and Fairfield Greenwich Group ("FGG"), of which FGBL is a member company, are pleased to provide you with the following fourth quarter 2003 update on the progress of the Fund. The next semi-annual update will be distributed in July 2004.

Throughout its 13-year history, the Fund has offered investors a low volatility strategy with little correlation to traditional asset classes with which to protect and grow their capital. It has delivered superior risk-adjusted performance through several market cycles and has done so with only seven down months in its 156-month history.

Overall Performance

During the 12-month period ending December 2003, Sentry Class A posted a return of 8.21% net to investors with a standard deviation of 2.33 (see Table I). Although the performance of the Fund in 2003 has lagged that of previous years on an absolute basis, it has remained remarkably consistent over time when measured relative to short-term interest rates. Figure I plots the compounded return of Sentry A relative to the compounded return of one-month USD LIBOR. We see that Sentry A (the solid line) has, since the Fund's assets topped \$100 million in 1993, consistently returned on average more than 7.00% over USD LIBOR (the dashed line).

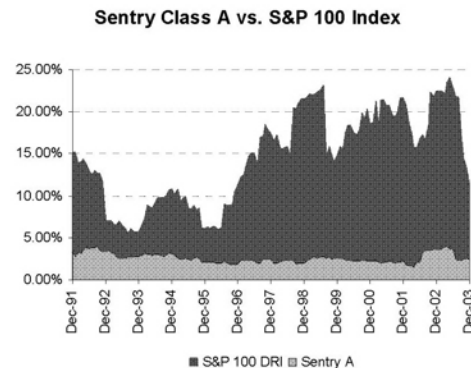
Figure I: Sentry A Returns vs. LIBOR



Source: FGG, Bloomberg

Figure II displays the trailing 12-month rolling standard deviation of Sentry returns against that of the S&P 100 Index, and Figure III plots the trailing 12-month Sharpe Ratio of the Fund against the Sharpe Ratio of the S&P 100 Index. Both charts communicate the relative out-performance of the Fund over time.

Figure II: 12-month Rolling Standard Deviation



Source: FGG, Bloomberg

Sentry's split-strike conversion strategy (the "Strategy") entails the purchase of a basket of about 40 to 50 large-cap U.S. equities drawn from the S&P 100 constituents and the simultaneous purchase of S&P 100 Index put options with approximately the same notional value as the basket of equities. The same number of S&P 100 Index call options are then sold to partially finance the purchase price of the put options and increase the standstill rate of return.

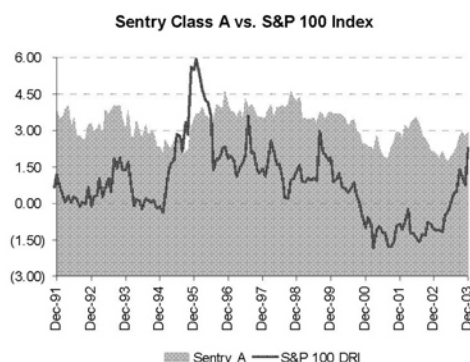
Fairfield Sentry Fund

Semi-Annual Update – Sentry Class A

Fourth Quarter, 2003

During 2003, the strike prices of both options have typically been one strike out-of-the-money (OTM) at the time the basket was constructed and have always been for front month expiration.

Figure III: 12-month Rolling Sharpe Ratio



Source: FGG, Bloomberg

The basket of equities is constructed with the purpose of emulating the return of the S&P 100 Index without purchasing the full index. In fact, it exhibits a correlation to the S&P 100 Index in excess of 95%, and represents a market capitalization of at least 75% of the market capitalization of the S&P 100 Index at the time of construction.

The Strategy was implemented during two-thirds of the trading days in 2003, with some level of investment occurring in each month except for April. There were a total of seven separate implementation cycles in 2003 during which the equity basket and options collar were constructed. On four of these occasions the options collar was rolled to the following month's expiration. This level of activity was slightly more than that of previous years.

For the fourth quarter of 2003, Sentry generated over \$84 million in gross trading profits from the split-strike conversion strategy, with equities contributing about 70% of the gains and the options positions contributing about 20% (See Figure V). Overall in 2003, Sentry added over \$410 million to P&L before fees, with all securities components posting profits (see Figures V and VI).

Figure IV: Sentry Returns vs. Benchmarks

	Q4 2003	2003 Annual	Risk [*]
Sentry ^{**}	1.57	8.21	2.33
S&P 100 DRI	11.06	26.24	10.74
Lehman Aggregate	0.35	4.35	5.49

Source: FGG, Bloomberg.

^{*}Risk is measured by trailing 12-month standard deviation

^{**}Sentry performance relates to Class A shares.

Portfolio Activity

In October 2003, the Fund legged into a fully invested position in the Strategy in three roughly equal increments early in the month. The Strategy was rolled one day before options expiration to higher strikes and held through the end of the month, returning 1.32% in October. November trading activity consisted of unwinding the equity positions and the options collar during the week of options expiration in four roughly equal increments. The Fund then purchased U.S. Treasury Bills with the proceeds. The Fund returned -0.08% in November. In December, the Fund invested about 22% of the assets in the Strategy and held this partially invested position for about a week, unwinding the basket of equities and option hedge just prior to expiration, and then maintained an all-cash position for the remainder of the month. For December, Sentry's net return was 0.32%, and 1.57% for the fourth quarter of 2003.

Overall, the Fund captured slightly less than a third of the 26.24% move in the S&P 100 during 2003, with about one-fifth of the volatility of the Index (See Figure VII).

Fairfield Sentry Fund

Semi-Annual Update – Sentry Class A

Fourth Quarter, 2003

Figure V: Income Summary for Fourth Quarter 2003

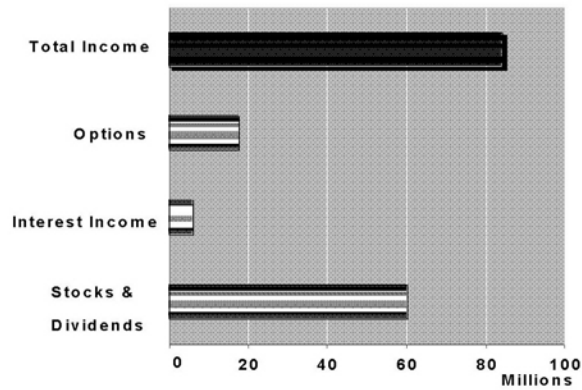


Figure VI: Income Summary for Fiscal Year 2003

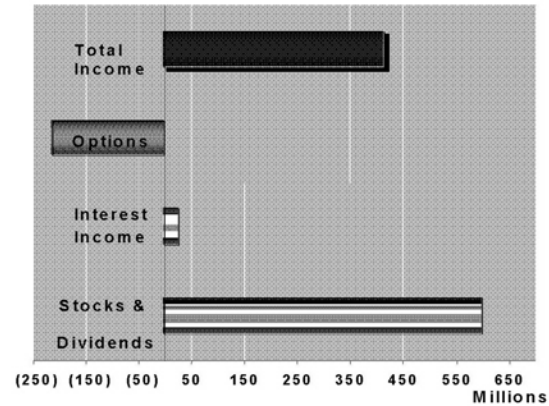
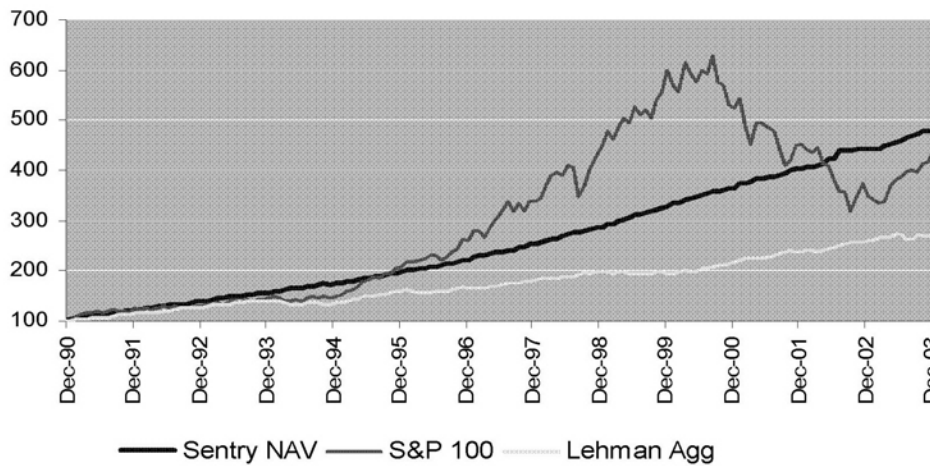


Figure VII: Unit Value Growth of Sentry vs. S&P 100 Index
(From inception to December 31, 2003)



Fairfield Sentry Fund

Semi-Annual Update – Sentry Class A

Fourth Quarter, 2003

Seeding Initiative

As we have informed you in previous letters, the Sentry Seeding Initiative is designed to invest a small portion of the Fund's assets with experienced management teams seeking to establish new fund businesses, and is limited to an aggregate of no more than 5% of the Fund's assets. In December this year, Sentry redeemed \$18 million of the initial \$30 million seeding made on October 1, 2002 to Fairfield Redstone Ltd., resulting in a partial realization of trading profits earned in that strategy. Thus, currently the Fund has about 1.62% of net assets (or approximately \$72 million) invested with three Seedling Managers: Fairfield Redstone Ltd. ("Redstone"), Fairfield Schlarbaum Offshore Fund Ltd. ("Schlarbaum"), and EMF Corporate Bond Arbitrage Fund, Ltd. ("EMF") (collectively, the "Seedlings").

These managers have performed well since the inception of the Seeding Program on October 1, 2002 (see Figure VIII). Their performance has contributed approximately 24 basis points to Sentry's return, from inception of the Seeding Program to December 31, 2003. Figure VIII presents the performance of the Seedling managers against selected indices.

Figure VIII: Seedling Returns vs. Indices

	Q4 2003	2003 Annual	Risk*
Redstone**	3.69	22.37	6.80
Russell 2000	14.19	45.36	15.53
Schlarbaum**	3.23	(1.87)	4.30
S&P 600	14.53	37.53	14.64
EMF**	1.92	8.73	0.81
Lehman Agg	0.35	4.35	5.49

Source: FGG, Bloomberg

* Risk is measured by trailing 12-month standard deviation

** Seedling performance based on 0% / 20%

As many of our investors know, we continue to identify, analyze, and monitor a number of prospective managers for the Sentry Seeding Initiative. All managers with whom we partner must provide full transparency and strong levels of liquidity, and above all, share our core capital preservation, relative low volatility philosophy. As with FGG's other core funds, seedling managers must submit to our rigorous due diligence and risk monitoring processes.

Fairfield Sentry Fund

Semi-Annual Update – Sentry Class A

Fourth Quarter, 2003

For further details regarding the Sentry Seeding Initiative or Redstone, Schlarbaum, EMF, please consult FGG's Monthly Strategy Reviews, Monthly Portfolio Update Webcasts and transcripts, and other FGG publications available via the FGG Web site (www.fggus.com) and our automated FGG e-NAV reporting service, as well as from your FGG representative.

If you have any questions regarding the foregoing, please contact your FGG representative. We thank you for your support, and look forward to continuing to serve your alternative investing needs.

Sincerely,

Fairfield Greenwich (Bermuda) Ltd.

Notes and Disclaimers

Performance results for Fairfield Sentry Ltd. are for Class A shares and are net of all fees and expenses.

No information provided herein shall constitute, or be construed as, an offer to sell or a solicitation of an offer to acquire any security, investment product or service, nor shall any such security, product or service be offered or sold in any jurisdiction where such offer or solicitation is prohibited by law or regulation. Recipients of this document who intend to apply for shares in Fairfield Sentry Ltd. or any FGG Fund are reminded that any such application may be made solely on the basis of the information and opinions contained in such Fund's Offering Memorandum.

Fairfield Greenwich (UK) Limited is authorized and regulated by the Financial Services Authority.

Exhibit 71

From: AUTERA, MIKE
Sent: Thu, 29 May 2003 14:19:38
GMT
To: J. Ezra Merkin
Subject: FW: Contact Information

Ezra,
This guy called me requesting information on our "Madoff feeder product" at the suggestion of Michael Andreola. He is interested in an investment of approximately \$2mm. I will arrange to send the docs if you do not object.

Mike

From: Rosenbloom, Keith [SMTP:KeithR@comw.com]
Sent: Thursday, May 29, 2003 10:19 AM
To: auteram@gabrielCapital.com
Subject: Contact Information

Per our conversation please forward to me documents regarding the ascott partners, LP and ascott partners, ltd.

Keith M. Rosenbloom
Commonwealth Associates
830 Third Avenue
New York, NY 10022
212 829-5833
800 422-1253
e-mail: KeithR@comw.com

www.CommonwealthAssociates.com

Exhibit 72

From: AUTERA, MIKE
Sent: Thu, 17 Jun 2004 14:49:18 GMT
To: 's3.takahashi@aozorabank.co.jp'
CC: 'CBRODY@aol.com'
Subject: RE: Follow up

Substantially all of Ascot Fund's assets are allocated and held at Bernard L. Madoff Investment Securities LLC. Ascot has no clearing, trading, or prime brokerage arrangements with other investment firms at this time.

-----Original Message-----

From: s3.takahashi@aozorabank.co.jp [mailto:s3.takahashi@aozorabank.co.jp]
Sent: Thursday, June 17, 2004 5:32 AM
To: AUTERA, MIKE
Cc: 'CBRODY@aol.com'
Subject: RE: Follow up

Mike,

Thank you for your prompt response.

Could you provide us the same kind of information not only about Ariel but also about Ascot? Your DDQ says Bernard L. Madoff & Co. is the sole custodian and prime broker for Ascot Fund Limited.

We really appreciate your assistance.

Best regards,

Seiichiro

SEIICHIRO TAKAHASHI
AOZORA BANK, LTD.
Credit Products Division
3-1, Kudan-minami 1-chome
Chiyoda-ku, Tokyo 102-8660, Japan
Phone: +81-3-5212-9845
Facsimile: +81-3-3222-1287
E-mail: s3.takahashi@aozorabank.co.jp
URL: <http://www.aozorabank.co.jp/>

"AUTERA, MIKE"



<AUTERAM@GABRIELCA 宛先: "s3.takahashi@aozorabank.co.jp" <s3.takahashi@aozorabank.co.jp>,
"CBRODY@aol.com"

- PITAL.com> <CBRODY@aol.com>

cc:

2004/06/17 08:17 件名: RE: Follow up

Seiichiro,

We have requested the audited financial statements and the independent auditor's report on internal control for Bernard L. Madoff

Investment Securities LLC. This is an entity at which Ascot and Ariel maintains brokerage accounts. I will forward these reports to you as soon as I receive them.

The percentage of Ariel's capital allocated to its Madoff account has varied between 10% and 25% depending upon opportunities in the strategy and the overall liquidity of the Ariel portfolio.

Ariel Fund Ltd maintains regular brokerage/trading accounts with most of the large Investment firms in the United States and Europe. In addition, Ariel has prime brokerage agreements with several firms. Morgan Stanley & Co and Bear Stearns (both in New York) are Ariel's primary prime brokers (the overwhelming bulk of Ariel's marketable and publicly traded

securities are held at one of these two firms). The prime brokers also hold cash balances on behalf of Ariel. These securities and cash serve as collateral for any amounts due to the brokers as well as collateral for any swaps or short sales.

Ariel may have counterparty risk with the firms in which it trades during the period between trade date and settlement date. Ariel may also have credit risk with those firms that hold assets (cash and fully paid for securities) on its behalf.

Please let me know if additional questions arise. Best
regards,
Mike

-----Original Message-----

From: s3.takahashi@aozorabank.co.jp [mailto:s3.takahashi@aozorabank.co.jp]
Sent: Wednesday, June 16, 2004 6:33 PM
To: anteram@gabrielcapital.com
Subject: Fwd: Follow up

Michael,

Thank you very much for sending us DDQs and other materials both for Ariel and Ascot. We really appreciate your assistance.

Although we've got them, we still need more information about the prime broker and the custodian. As Chris already asked you in the previous e-mail (see attached below), we would repeat the following questions:

1. Do you get audits for the entity that clears with at Bernie Madoff's? 2. What percentage of Ariel's assets are traded, cleared and kept at Madoff's? 3. Do you have any counter party risk and who else do you clear through or have counter party risk with? (Ezra mentioned Goldman Sacks and Morgan

Stanley)

(additionally) 4. Could you send us a copy of the most recent audit of the custodian ("Bernard L. Madoff & Co.") of the fund?

We would appreciate if you could provide us these information within a few days since we're preparing for our Investment Committee early next week.

Seiichiro Takahashi

SEIICHIRO TAKAHASHI
AOZORA BANK, LTD.
Credit Products Division
3-1, Kudan-minami 1-chome
Chiyoda-ku, Tokyo 102-8660, Japan
Phone: +81-3-5212-9845
Facsimile: +81-3-3222-1287
E-mail: s3.takahashi@aozorabank.co.jp
URL: <http://www.aozorabank.co.jp/>

-----Original Message-----

From: CBRODY@aol.com [mailto:CBRODY@aol.com]
Sent: Tuesday, June 01, 2004 10:38 PM
To: auteram@gabrielcapital.com
Cc: JEMerkin@gabrielcapital.com; s3.takahashi@aozorabank.co.jp
Subject: Follow up

Michael,

Could you please let us know when the following documents will be available:

Due diligence questionnaire on Ascot and;

Due diligence questionnaire on Ariel.

Also, in our meetings Ezra mentioned that Bernie Madoff clears his owns trades. In their due diligence review a manager mentioned he was not sure if Bernie Madoff's organization published financial audits to the public.

Do you get audits for the entity that clears with at Bernie Madoff's?

What percentage of Ariel's assets are traded, cleared and kept at Madoff's?

Do you have any counter party risk and who else do you clear through or have counter party risk with? (Ezra mentioned Goldman Sacks and Morgan Stanley)

We plan on finishing our review in the next 2 weeks and going to investment committee thereafter with the intention of funding by July 1, 2004.

Thank you for your assistance.

Christopher Brody
Aozora Bank, Ltd.

Exhibit 73

[SERVICES](#)[INDUSTRIES](#)[INSIGHTS](#)[ABOUT](#)

About BDO

BDO brings world-class resources and exceptional service to each and every one of our clients.

Exceptional service. Worldwide.

BDO delivers assurance, tax, financial advisory, and consulting services to clients throughout the country and around the globe. We offer numerous industry-specific practices, world-class resources, and an unparalleled commitment to meeting our clients' needs. We currently serve more than 400 publicly traded domestic and international clients.

- Unparalleled partner-involvement
- Deep industry knowledge and participation
- Geographic coverage across the U.S.
- Cohesive global network
- Focused capabilities across disciplines

BDO brings world-class resources and exceptional service to each and every one of our clients. BDO USA is a member of BDO International, the world's fifth largest accounting and consulting network.

Exhibit 74



Hedge Fund Auditor Market Share

POSTED ON MAY 14, 2014 BY JOHN PAKALUK

7

With **rumors** continuing to circulate that KPMG is in the midst of a transaction to acquire Rothstein Kass, it **has been speculated** that Rothstein's extensive private fund practice has been the driving factor of the acquisition. Just how large is the hedge fund practice of Rothstein Kass? The table below shows the ten audit firms cited most frequently by hedge funds in their Form ADVs.

Auditor	Hedge Funds
Ernst & Young	3,583
PricewaterhouseCoopers	3,483
Rothstein Kass	2,063
Deloitte & Touche	1,727
KPMG	1,616
EisnerAmper	507
BDO	358
McGladrey	356
Spicer Jeffries	342
Grant Thornton	320
Others	2,318
Total Unique Funds	16,673

Source: www.AuditAnalytics.com 508.476.7007
Note: Data as of 5/13/14

As you can see, Rothstein comes in third on the list, with about 12% of the total market, and more hedge fund engagements than both Deloitte and KPMG.¹ The top five have about 75% of the total market share between them, so Rothstein is clearly one of the major firms in this **market niche**.

Assuming KPMG were to retain all of Rothstein's hedge fund clients, then KPMG would leapfrog both PwC and EY on its way to the total engagement leader in the hedge fund auditor market.

1. This analysis of engagements counts all affiliate firms associated with a unique Fund ID as one instance. So, for example, if one unique Fund ID cites both BDO USA and BDO Cayman as its auditor in the Form ADV, we counted that as one fund for BDO. ~

Posted in **Auditor Market Share, Financial Services (OIA), Hedge Funds** by **John Pakaluk**

Exhibit 75

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC

CRD Number:
2625

ADV - SEC, Page 1

Rev. 02/2005

8/25/2006 10:20:03 AM

ADV Part 1A, Page 1

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 3.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you.

- A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):
BERNARD L. MADOFF INVESTMENT SECURITIES LLC
- B. Name under which you primarily conduct your advisory business, if different from Item 1.A.
BERNARD L. MADOFF INVESTMENT SECURITIES LLC
List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.
- C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.), enter the new name and specify whether the name change is of
☐ your legal name or ☐ your primary business name:
- D. If you are registered with the SEC as an investment adviser, your SEC file number: 801-67134
- E. If you have a number ("CRD Number") assigned by NASD's CRD system or by the IARD system, your CRD number: 2625
If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC

CRD Number:
2625

ADV - SEC, Page 2

Rev. 02/2005

8/25/2006 10:20:03 AM

Item 1 Identifying Information (Continued)

F. *Principal Office and Place of Business*

(1) Address (do not use a P.O. Box):

Number and Street 1:

Number and Street 2:

885 THIRD AVENUE

City: State: Country: ZIP+4/Postal Code:
NEW YORK NY USA 10022

If this address is a private residence, check this box: ☐

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more state securities authorities, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for registration, or are registered only, with the SEC, list the largest five offices in terms of numbers of employees.

- (2) Days of week that you normally conduct business at your principal office and place of business:

☒ Monday-Friday ☐ Other:

Normal business hours at this location:
9AM - 5PM

- (3) Telephone number at this location:

212-230-2424

- (4) Facsimile number at this location:

212-486-8178

- G. Mailing address, if different from your principal office and place of business address:

Number and Street 1:

Number and Street 2:

City: State: Country: ZIP+4/Postal Code:

If this address is a private residence, check this box: ☐

- H. If you are a sole proprietor, state your full residence address, if different from your principal office and place of business address in Item 1.F.:

Number and Street 1:

Number and Street 2:

City: State: Country: ZIP+4/Postal Code:

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES

CRD Number:

LLC

2625

ADV - SEC, Page 3

Rev. 02/2005

8/25/2006 10:20:03 AM

Item 1 Identifying Information (Continued)

- I. Do you have World Wide Web site addresses?

YES NO

☒ ☐

If "yes," list these addresses on Section 1.I. of Schedule D. If a web address serves as a portal through which to access other information you have published on the World Wide Web, you may list the portal without listing addresses for all of the other information. Some advisers may need to list more than one portal address. Do not provide individual

electronic mail addresses in response to this Item.

J. Contact Employee:

Name:	Title:		
PETER MADOFF	PRINCIPAL		
Telephone Number:	Facsimile Number:		
212 230 2424	212 486 8178		
Number and Street 1:	Number and Street 2:		
885 THIRD AVENUE			
City:	State:	Country:	ZIP+4/Postal Code:
NEW YORK	NY	USA	10022
Electronic mail (e-mail) address, if contact employee has one:			
PMADOFF@MADOFF.COM			

The contact employee should be an employee whom you have authorized to receive information and respond to questions about this Form ADV.

YES NO

- K. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your principal office and place of business?

☐ YES ☒ NO

If "yes," complete Section 1.K. of Schedule D.

YES NO

- L. Are you registered with a foreign financial regulatory authority?

☐ YES ☒ NO

Answer "no" if you are not registered with a foreign financial regulatory authority, even if you have an affiliate that is registered with a foreign financial regulatory authority. If "yes," complete Section 1.L. of Schedule D.

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC

CRD Number:
2625

ADV - SEC, Page 4

Rev. 02/2005

8/25/2006 10:20:03 AM

Item 2 SEC Registration

Responses to this Item help us (and you) determine whether you are eligible to register with the SEC. Complete this Item 2 only if you are applying for SEC registration or submitting an *annual updating amendment* to your SEC registration.

- A. To register (or remain registered) with the SEC, you must check at least one of the Items 2.A(1) through 2.A(11), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A(12). You:

☒ (1) have *assets under management* of \$25 million (in U.S. dollars) or more;

See Part 1A Instruction 2.a. to determine whether you should check this box.

☐ (2) have your *principal office and place of business* in Wyoming;

☐ (3) have your *principal office and place of business* outside the United States;

☐ (4) are an investment adviser (or sub-adviser) to an investment company registered under the Investment Company Act of 1940;

See Part 1A Instruction 2.b. to determine whether you should check this box.

☐ (5) have been designated as a nationally recognized statistical rating organization;

See Part 1A Instruction 2.c. to determine whether you should check this box.

☐ (6) are a pension consultant that qualifies for the exemption in rule 203A-2(b);

See Part 1A Instruction 2.d. to determine whether you should check this box.

☐ (7) are relying on rule 203A-2(c) because you are an investment adviser that *controls*, is *controlled* by, or is under common *control* with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;

See Part 1A Instruction 2.e. to determine whether you should check this box. If you check this box, complete Section 2.A(7) of Schedule D.

☐ (8) are a newly formed adviser relying on rule 203A-2(d) because you expect to be eligible for SEC registration within 120 days;

See Part 1A Instruction 2.f. to determine whether you should check this box. If you check this box, complete Section 2.A(8) of Schedule D.

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

**Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC**

**CRD Number:
2625**

ADV - SEC, Page 5

Rev. 02/2005

8/25/2006 10:20:03 AM

Item 2 SEC Registration (Continued)

☐ (9) are a multi-state adviser relying on rule 203A-2(e);

See Part 1A Instruction 2.g. to determine whether you should check this box. If you check this box, complete Section 2.A(9) of Schedule D.

☐ (10) are an Internet investment adviser relying on rule 203A-2(f);

See Part 1A Instructions 2.h. to determine whether you should check this box.

(11) have received an SEC order exempting you from the prohibition against registration

☐ with the SEC;

If you checked this box, complete Section 2.A(11) of Schedule D.

☐ (12) are no longer eligible to remain registered with the SEC.

See Part 1A Instructions 2.i. to determine whether you should check this box.

B. Under state laws, SEC-registered advisers may be required to provide to *state securities authorities* a copy of the Form ADV and any amendments they file with the SEC. These are called *notice filings*. If this is an initial application, check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to direct your *notice filings* to additional state(s), check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to your registration to stop your *notice filings* from going to state(s) that currently receive them, uncheck the box(es) next to those state(s).

<input type="checkbox"/> AL	<input type="checkbox"/> ID	<input type="checkbox"/> MO	<input type="checkbox"/> PA
<input type="checkbox"/> AK	<input type="checkbox"/> IL	<input type="checkbox"/> MT	<input type="checkbox"/> PR
<input type="checkbox"/> AZ	<input type="checkbox"/> IN	<input type="checkbox"/> NE	<input type="checkbox"/> RI
<input type="checkbox"/> AR	<input type="checkbox"/> IA	<input type="checkbox"/> NV	<input type="checkbox"/> SC
<input type="checkbox"/> CA	<input type="checkbox"/> KS	<input type="checkbox"/> NH	<input type="checkbox"/> SD
<input type="checkbox"/> CO	<input type="checkbox"/> KY	<input type="checkbox"/> NJ	<input type="checkbox"/> TN
<input type="checkbox"/> CT	<input type="checkbox"/> LA	<input type="checkbox"/> NM	<input type="checkbox"/> TX
<input type="checkbox"/> DE	<input type="checkbox"/> ME	<input checked="" type="checkbox"/> NY	<input type="checkbox"/> UT
<input type="checkbox"/> DC	<input type="checkbox"/> MD	<input type="checkbox"/> NC	<input type="checkbox"/> VT
<input type="checkbox"/> FL	<input type="checkbox"/> MA	<input type="checkbox"/> ND	<input type="checkbox"/> VI
<input type="checkbox"/> GA	<input type="checkbox"/> MI	<input type="checkbox"/> OH	<input type="checkbox"/> VA
<input type="checkbox"/> GU	<input type="checkbox"/> MN	<input type="checkbox"/> OK	<input type="checkbox"/> WA
<input type="checkbox"/> HI	<input type="checkbox"/> MS	<input type="checkbox"/> OR	<input type="checkbox"/> WV
			<input type="checkbox"/> WI

If you are amending your registration to stop your notice filings from going to a state that currently receives them and you do not want to pay that state's notice filing fee for the coming year, your amendment must filed before the end of the year (December 31).

Item 3 Form Of Organization

A. How are you organized?

- ☐ Corporation
 ☐ Sole Proprietorship
 ☐ Limited Liability Partnership (LLP)
 ☐ Partnership
 ☒ Limited Liability Company (LLC)
 ☐ Other (specify):

If you are changing your response to this Item, see Part 1A Instruction 4.

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

**Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC**

**CRD Number:
2625**

ADV - SEC, Page 6

Rev. 02/2005

8/25/2006 10:20:03 AM

Item 3 Form Of Organization (Continued)

B. In what month does your fiscal year end each year?
October

C. Under the laws of what state or country are you organized?
NEW YORK

If you are a partnership, provide the name of the state or country under whose laws your partnership was formed. If you are a sole proprietor, provide the name of the state or country where you reside.

If you are changing your response to this Item, see Part 1A Instruction 4.

Item 4 Successions

YES NO

A. Are you, at the time of this filing, succeeding to the business of a registered investment adviser? ☐ ☒

If "yes," complete Item 4.B. and Section 4 of Schedule D.

B. Date of Succession: (MM/DD/YYYY)

If you have already reported this succession on a previous Form ADV filing, do not report the succession again. Instead, check "No." See Part 1A Instruction 4.

Item 5 Information About Your Advisory Business

Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly-formed advisers for completing this Item 5.

Employees

A. Approximately how many *employees* do you have? Include full and part-time *employees* but do not include any clerical workers.

☐ 1-5 ☐ 6-10 ☐ 11-50 ☒ 51-250 ☐ 251-500
☐ 501-1,000 ☐ More than 1,000 If more than 1,000, how many?
(round to the nearest 1,000)

B.

(1) Approximately how many of these *employees* perform investment advisory functions (including research)?

☐ 0 ☒ 1-5 ☐ 6-10 ☐ 11-50 ☐ 51-250
☐ 251-500 ☐ 501-1,000 ☐ More than 1,000 If more than 1,000, how many?

- 1,000 (round to the nearest 1,000)
- (2) Approximately how many of these *employees* are registered representatives of a broker-dealer?
- ☒ 0
 ☐ 1-5
 ☐ 6-10
 ☐ 11-50
 ☒ 51-250
- ☐ 251-500
 ☐ 501-1,000
 ☐ More than 1,000
 If more than 1,000, how many?
 (round to the nearest 1,000)

If you are organized as a sole proprietorship, include yourself as an employee in your responses to Items 5.A(1) and 5.B(2). If an employee performs more than one function, you should count that employee in each of your responses to Item 5.B(1) and 5.B(2).

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES

CRD Number:

LLC

2625

ADV - SEC, Page 7

Rev. 02/2005

8/25/2006 10:20:03 AM

Item 5 Information About Your Advisory Business (Continued)

- (3) Approximately how many firms or other *persons* solicit advisory *clients* on your behalf?
- ☒ 0
 ☐ 1-5
 ☐ 6-10
 ☐ 11-50
 ☐ 51-250
- ☐ 251-500
 ☐ 501-1,000
 ☐ More than 1,000
 If more than 1,000, how many?
 (round to the nearest 1,000)

In your response to Item 5.B(3), do not count any of your employees and count a firm only once -- do not count each of the firm's employees that solicit on your behalf.

Clients

- C. To approximately how many *clients* did you provide investment advisory services during your most-recently completed fiscal year?

- ☒ 0
 ☐ 1-10
 ☐ 11-25
 ☐ 26-100
 ☐ 101-250
- ☐ 251-500
 ☐ More than 500
 If more than 500, how many?
 (round to the nearest 500)

- D. What types of *clients* do you have? Indicate the approximate percentage that each type of *client* comprises of your total number of *clients*.

	None	Up to 10%	11-25%	26-50%	51-75%	More Than 75%
(1) Individuals (other than <i>high net worth individuals</i>)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(2) <i>High net worth individuals</i>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(3) Banking or thrift institutions	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(4) Investment companies (including mutual	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- funds)
- | | | | | | | | |
|------|---|----------------------------------|----------------------------------|----------------------------------|-----------------------|----------------------------------|-----------------------|
| (5) | Pension and profit sharing plans (other than plan participants) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (6) | Other pooled investment vehicles (e.g., hedge funds) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| (7) | Charitable organizations | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (8) | Corporations or other businesses not listed above | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (9) | State or municipal <i>government entities</i> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (10) | Other: | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

The category "individuals" includes trusts, estates, 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.

Unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, check "None" in response to Item 5.D(4).

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES

CRD Number:

LLC

2625

ADV - SEC, Page 8

Rev. 02/2005

8/25/2006 10:20:03 AM

Item 5 Information About Your Advisory Business (Continued)

Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

- ☐ (1) A percentage of assets under your management
- ☐ (2) Hourly charges
- ☐ (3) Subscription fees (for a newsletter or periodical)
- ☐ (4) Fixed fees (other than subscription fees)
- ☒ (5) Commissions
- ☐ (6) *Performance-based fees*
- ☐ (7) Other (specify):

Assets Under Management

F. (1) Do you provide continuous and regular supervisory or management services to securities portfolios? **YES** ☒ **NO** ☐

(2) If yes, what is the amount of your assets under management and total number of accounts?

	U.S. Dollar Amount	Total Number of Accounts
Discretionary:	(a) \$ 11711451428 .00	(d) 23
Non-Discretionary:	(b) \$ 0 .00	(e) 0

Total: (c) \$ 11711451428 .00 (f) 23

Part 1A Instruction 5.b. explains how to calculate your assets under management. You must follow these instructions carefully when completing this Item.

Advisory Activities

G. What type(s) of advisory services do you provide? Check all that apply.

- ☐ (1) Financial planning services
- ☒ (2) Portfolio management for individuals and/or small businesses
- ☐ (3) Portfolio management for investment companies
- ☒ (4) Portfolio management for businesses or institutional *clients* (other than investment companies)
- ☐ (5) Pension consulting services
- ☐ (6) Selection of other advisers
- ☐ (7) Publication of periodicals or newsletters
- ☐ (8) Security ratings or pricing services
- ☐ (9) Market timing services
- ☐ (10) Other (specify):

Do not check Item 5.G(3) unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940.

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

**Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC**

**CRD Number:
2625**

ADV - SEC, Page 9

Rev. 02/2005

8/25/2006 10:20:03 AM

Item 5 Information About Your Advisory Business (Continued)

H. If you provide financial planning services, to how many *clients* did you provide these services during your last fiscal year?

- | | | | | |
|-------------------------------|-------------------------------|-------------------------------------|---|------------------------------|
| <input type="radio"/> 0 | <input type="radio"/> 1-10 | <input type="radio"/> 11-25 | <input type="radio"/> 26-50 | <input type="radio"/> 51-100 |
| <input type="radio"/> 101-250 | <input type="radio"/> 251-500 | <input type="radio"/> More than 500 | If more than 500, how many?
(round to the nearest 500) | |

I. If you participate in a *wrap fee program*, do you (check all that apply):

- ☐ (1) *sponsor the wrap fee program* ?
- ☐ (2) *act as a portfolio manager for the wrap fee program?*

If you are a portfolio manager for a wrap fee program, list the names of the programs and their sponsors in Section 5.I(2) of Schedule D.

If your involvement in a wrap fee program is limited to recommending wrap fee programs to your clients, or you advise a mutual fund that is offered through a wrap fee program, do not check either Item 5.I(1) or 5.I(2).

Item 6 Other Business Activities

In this Item, we request information about your other business activities.

A. You are actively engaged in business as a (check all that apply):

- ☒ (1) Broker-dealer
- ☐ (2) Registered representative of a broker-dealer
- ☐ (3) Futures commission merchant, commodity pool operator, or commodity trading advisor
- ☐ (4) Real estate broker, dealer, or agent
- ☐ (5) Insurance broker or agent
- ☐ (6) Bank (including a separately identifiable department or division of a bank)
- ☐ (7) Other financial product salesperson (specify):

YES NO

B. (1) Are you actively engaged in any other business not listed in Item 6.A. (other than giving investment advice)?

☐ ☒

(2) If yes, is this other business your primary business?

☐ ☐

If "yes," describe this other business on Section 6.B. of Schedule D.

YES NO

(3) Do you sell products or provide services other than investment advice to your advisory clients?

☒ ☐

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC

CRD Number:
2625

ADV - SEC, Page 10

Rev. 02/2005

8/25/2006 10:20:03 AM

Item 7 Financial Industry Affiliations

In this Item, we request information about your financial industry affiliations and activities. This information identifies areas in which conflicts of interest may occur between you and your clients.

Item 7 requires you to provide information about you and your related persons. Your related persons are all of your advisory affiliates and any person that is under common control with you.

A. You have a related person that is a (check all that apply):

- ☒ (1) broker-dealer, municipal securities dealer, or government securities broker or dealer
- ☐ (2) investment company (including mutual funds)
- ☐ (3) other investment adviser (including financial planners)
- ☐ (4) futures commission merchant, commodity pool operator, or commodity trading advisor

- ☐ (5) banking or thrift institution
- ☐ (6) accountant or accounting firm
- ☐ (7) lawyer or law firm
- ☐ (8) insurance company or agency
- ☐ (9) pension consultant
- ☐ (10) real estate broker or dealer
- ☐ (11) sponsor or syndicator of limited partnerships

If you checked Item 7.A(3), you must list on Section 7.A. of Schedule D all your related persons that are investment advisers. If you checked Item 7.A(1), you may elect to list on Section 7.A. of Schedule D all your related persons that are broker-dealers. If you choose to list a related broker-dealer, the IARD will accept a single Form U-4 to register an investment adviser representative who also is a broker-dealer agent ("registered rep") of that related broker-dealer.

YES NO

- B. Are you or any *related person* a general partner in an *investment-related* limited partnership or manager of an *investment-related* limited liability company, or do you advise any other "private fund" as defined under SEC rule 203(b)(3)-1? ☐ ☒

If "yes," for each limited partnership or limited liability company, or (if applicable) private fund, complete Section 7.B. of Schedule D. If, however, you are an SEC-registered adviser and you have related persons that are SEC-registered advisers who are the general partners of limited partnerships or the managers of limited liability companies, you do not have to complete Section 7.B. of Schedule D with respect to those related advisers' limited partnerships or limited liability companies.

To use this alternative procedure, you must state in the Miscellaneous Section of Schedule D: (1) that you have related SEC-registered investment advisers that manage limited partnerships or limited liability companies that are not listed in Section 7.B. of your Schedule D; (2) that complete and accurate information about those limited partnerships or limited liability companies is available in Section 7.B. of Schedule D of the Form ADVs of your related SEC-registered advisers; and (3) whether your clients are solicited to invest in any of those limited partnerships or limited liability companies.

Item 8 Participation or Interest in Client Transactions

In this Item, we request information about your participation and interest in your *clients'* transactions. Like Item 7, this information identifies areas in which conflicts of interest may occur between you and your *clients*.

Like Item 7, Item 8 requires you to provide information about you and your *related persons*.

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES

CRD Number:

LLC

2625

ADV - SEC, Page 11

Rev. 02/2005

8/25/2006 10:20:03 AM

Item 8 Participation or Interest in *Client* Transactions (Continued)

Proprietary Interest in *Client* Transactions

- | A. Do you or any <i>related person</i> : | Yes | No |
|---|----------------------------------|----------------------------------|
| (1) buy securities for yourself from advisory <i>clients</i> , or sell securities you own to advisory <i>clients</i> (principal transactions)? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) buy or sell for yourself securities (other than shares of mutual funds) that you also recommend to advisory <i>clients</i> ? | <input checked="" type="radio"/> | <input type="radio"/> |
| (3) recommend securities (or other investment products) to advisory <i>clients</i> in which you or any <i>related person</i> has some other proprietary (ownership) interest (other than those mentioned in Items 8.A(1) or (2))? | <input type="radio"/> | <input checked="" type="radio"/> |

Sales Interest in *Client* Transactions

- | B. Do you or any <i>related person</i> : | Yes | No |
|--|-----------------------|----------------------------------|
| (1) as a broker-dealer or registered representative of a broker-dealer, execute securities trades for brokerage customers in which advisory <i>client</i> securities are sold to or bought from the brokerage customer (agency cross transactions)? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) recommend purchase of securities to advisory <i>clients</i> for which you or any <i>related person</i> serves as underwriter, general or managing partner, or purchaser representative? | <input type="radio"/> | <input checked="" type="radio"/> |
| (3) recommend purchase or sale of securities to advisory <i>clients</i> for which you or any <i>related person</i> has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)? | <input type="radio"/> | <input checked="" type="radio"/> |

Investment or Brokerage Discretion

- | C. Do you or any <i>related person</i> have <i>discretionary authority</i> to determine the: | Yes | No |
|--|----------------------------------|----------------------------------|
| (1) securities to be bought or sold for a <i>client's</i> account? | <input checked="" type="radio"/> | <input type="radio"/> |
| (2) amount of securities to be bought or sold for a <i>client's</i> account? | <input checked="" type="radio"/> | <input type="radio"/> |
| (3) broker or dealer to be used for a purchase or sale of securities for a <i>client's</i> account? | <input type="radio"/> | <input checked="" type="radio"/> |
| (4) commission rates to be paid to a broker or dealer for a <i>client's</i> securities transactions? | <input type="radio"/> | <input checked="" type="radio"/> |

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

CRD Number:
2625

ADV - SEC, Page 12

Rev. 02/2005

8/25/2006 10:20:03 AM

Item 8 Participation or Interest in *Client* Transactions (Continued)

- | | | |
|--|-----------------------|----------------------------------|
| D. Do you or any <i>related person</i> recommend brokers or dealers to <i>clients</i> ? | <input type="radio"/> | <input checked="" type="radio"/> |
| E. Do you or any <i>related person</i> receive research or other products or services other than execution from a broker-dealer or a third party in connection with <i>client</i> securities transactions? | <input type="radio"/> | <input checked="" type="radio"/> |
| F. Do you or any <i>related person</i> , directly or indirectly, compensate any <i>person</i> for <i>client</i> referrals? | <input type="radio"/> | <input checked="" type="radio"/> |

In responding to this Item 8.F., consider in your response all cash and non-cash compensation that you or a related person gave any person in exchange for client referrals, including any bonus that is based, at least in part, on the number or amount of client referrals.

Item 9 Custody

In this Item, we ask you whether you or a *related person* has *custody* of *client* assets. If you are registering or registered with the SEC and you deduct your advisory fees directly from your *clients'* accounts but you do not otherwise have *custody* of your *clients'* funds or securities, you may answer "no" to Item 9A.(1) and 9A.(2).

- | | Yes | No |
|---|----------------------------------|----------------------------------|
| A. Do you have <i>custody</i> of any advisory <i>clients'</i> : | | |
| (1) cash or bank accounts? | <input checked="" type="radio"/> | <input type="radio"/> |
| (2) securities? | <input checked="" type="radio"/> | <input type="radio"/> |
| B. Do any of your <i>related persons</i> have <i>custody</i> of any of your advisory <i>clients'</i> : | | |
| (1) cash or bank accounts? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) securities? | <input type="radio"/> | <input checked="" type="radio"/> |
| C. If you answered "yes" to either Item 9.B(1) or 9.B(2), is that <i>related person</i> a broker-dealer registered under Section 15 of the Securities Exchange Act of 1934? | <input type="radio"/> | <input type="radio"/> |

Item 10 Control Persons

In this Item, we ask you to identify every *person* that, directly or indirectly, *controls* you.

If you are submitting an initial application, you must complete Schedule A and Schedule B. Schedule A asks for information about your direct owners and executive officers. Schedule B asks for information about your indirect owners. If this is an amendment and you are updating information you reported on either Schedule A or Schedule B (or both) that you filed with your initial application, you must complete Schedule C.

	YES	NO
Does any <i>person</i> not named in Item 1.A. or Schedules A, B, or C, directly or indirectly, <i>control</i> your management or policies?	<input type="radio"/>	<input checked="" type="radio"/>

If yes, complete Section 10 of Schedule D.

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES

CRD Number:

LLC

2625

ADV - SEC, Page 13

Rev. 02/2005

8/25/2006 10:20:03 AM

Item 11 Disclosure Information

In this Item, we ask for information about your disciplinary history and the disciplinary history of all your *advisory affiliates*. We use this information to determine whether to grant your application for registration, to decide whether to revoke your registration or to place limitations on your activities as an investment adviser, and to identify potential problem areas to focus on during our on-site examinations. One event may result in "yes" answers to more than one of the questions below.

Your *advisory affiliates* are: (1) all of your current *employees* (other than *employees* performing only clerical, administrative, support or similar functions); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you. If you are a "separately identifiable department or division" (SID) of a bank, see the Glossary of Terms to determine who your *advisory affiliates* are.

If you are registered or registering with the SEC, you may limit your disclosure of any event listed in Item 11 to ten years following the date of the event. If you are registered or registering with a state, you must respond to the questions as posed; you may, therefore, limit your disclosure to ten years following the date of an event only in responding to Items 11.A(1), 11.A(2), 11.B(1), 11.B(2), 11.D(4), and 11.H(1)(a). For purposes of calculating this ten-year period, the date of an event is the date the final order, judgment, or decree was entered, or the date any rights of appeal from preliminary orders, judgments, or decrees lapsed.

You must complete the appropriate Disclosure Reporting Page ("DRP") for "yes" answers to the questions in this Item 11.

For "yes" answers to the following questions, complete a Criminal Action DRP:

- | | |
|--|--|
| A. In the past ten years, have you or any <i>advisory affiliate</i> : | YES NO |
| (1) been convicted of or plead guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any <i>felony</i> ? | <input type="radio"/> <input checked="" type="radio"/> |
| (2) been <i>charged</i> with any <i>felony</i> ? | <input type="radio"/> <input checked="" type="radio"/> |

If you are registered or registering with the SEC, you may limit your response to Item 11.A(2) to charges that are currently pending.

- | | |
|--|--|
| B. In the past ten years, have you or any <i>advisory affiliate</i> : | YES NO |
| (1) been convicted of or plead guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a <i>misdemeanor</i> involving: investments or an <i>investment-related</i> business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses? | <input type="radio"/> <input checked="" type="radio"/> |
| (2) been <i>charged</i> with a <i>misdemeanor</i> listed in 11.B(1)? | <input type="radio"/> <input checked="" type="radio"/> |

If you are registered or registering with the SEC, you may limit your response to Item 11.B(2) to charges that are currently pending.

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
 LLC

CRD Number:
 2625

ADV - SEC, Page 14

Rev. 02/2005

8/25/2006 10:20:03 AM

Item 11 Disclosure Information (Continued)

For "yes" answers to the following questions, complete a Regulatory Action DRP:

- | | YES | NO |
|---|----------------------------------|----------------------------------|
| C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever: | | |
| (1) <i>found</i> you or any <i>advisory affiliate</i> to have made a false statement or omission? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) <i>found</i> you or any <i>advisory affiliate</i> to have been <i>involved</i> in a violation of SEC or CFTC regulations or statutes? | <input type="radio"/> | <input checked="" type="radio"/> |
| (3) <i>found</i> you or any <i>advisory affiliate</i> to have been a cause of an <i>investment-related</i> business having its authorization to do business denied, suspended, revoked, or restricted? | <input type="radio"/> | <input checked="" type="radio"/> |
| (4) entered an <i>order</i> against you or any <i>advisory affiliate</i> in connection with <i>investment-related</i> activity? | <input type="radio"/> | <input checked="" type="radio"/> |
| (5) imposed a civil money penalty on you or any <i>advisory affiliate</i> , or <i>ordered</i> you or any <i>advisory affiliate</i> to cease and desist from any activity? | <input type="radio"/> | <input checked="" type="radio"/> |
| D. Has any other federal regulatory agency, any state regulatory agency, or any <i>foreign financial regulatory authority</i> : | | |
| (1) ever <i>found</i> you or any <i>advisory affiliate</i> to have made a false statement or omission, or been dishonest, unfair, or unethical? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) ever <i>found</i> you or any <i>advisory affiliate</i> to have been <i>involved</i> in a violation of <i>investment-related</i> regulations or statutes? | <input type="radio"/> | <input checked="" type="radio"/> |
| (3) ever <i>found</i> you or any <i>advisory affiliate</i> to have been a cause of an <i>investment-related</i> business having its authorization to do business denied, suspended, revoked, or restricted? | <input type="radio"/> | <input checked="" type="radio"/> |
| (4) in the past ten years, entered an <i>order</i> against you or any <i>advisory affiliate</i> in connection with an <i>investment-related</i> activity? | <input type="radio"/> | <input checked="" type="radio"/> |
| (5) ever denied, suspended, or revoked your or any <i>advisory affiliate's</i> registration or license, or otherwise prevented you or any <i>advisory affiliate</i> , by <i>order</i> , from associating with an <i>investment-related</i> business or restricted your or any <i>advisory affiliate's</i> activity? | <input type="radio"/> | <input checked="" type="radio"/> |
| E. Has any <i>self-regulatory organization</i> or commodities exchange ever: | | |
| (1) <i>found</i> you or any <i>advisory affiliate</i> to have made a false statement or omission? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) <i>found</i> you or any <i>advisory affiliate</i> to have been <i>involved</i> in a violation of its rules (other than a violation designated as a " <i>minor rule violation</i> " under a plan approved by the SEC)? | <input checked="" type="radio"/> | <input type="radio"/> |
| (3) <i>found</i> you or any <i>advisory affiliate</i> to have been the cause of an <i>investment-related</i> business having its authorization to do business denied, suspended, revoked, or restricted? | <input type="radio"/> | <input checked="" type="radio"/> |
| (4) disciplined you or any <i>advisory affiliate</i> by expelling or suspending you or the <i>advisory affiliate</i> from membership, barring or suspending you or the <i>advisory affiliate</i> from association with other members, or otherwise restricting your or the <i>advisory affiliate's</i> activities? | <input type="radio"/> | <input checked="" type="radio"/> |

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC
ADV - SEC, Page 15
8/25/2006 10:20:03 AM

CRD Number:
2625
Rev. 02/2005

Item 11 Disclosure Information (Continued)

F. Has an authorization to act as an attorney, accountant, or federal contractor granted to you or any *advisory affiliate* ever been revoked or suspended? ☐ ☒

G. Are you or any *advisory affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of Item 11.C., 11.D., or 11.E.? ☐ ☒

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

- | H. (1) Has any domestic or foreign court: | YES | NO |
|--|-----------------------|----------------------------------|
| (a) in the past ten years, <i>enjoined</i> you or any <i>advisory affiliate</i> in connection with any <i>investment-related</i> activity? | <input type="radio"/> | <input checked="" type="radio"/> |
| (b) ever <i>found</i> that you or any <i>advisory affiliate</i> were <i>involved</i> in a violation of <i>investment-related</i> statutes or regulations? | <input type="radio"/> | <input checked="" type="radio"/> |
| (c) ever dismissed, pursuant to a settlement agreement, an <i>investment-related</i> civil action brought against you or any <i>advisory affiliate</i> by a state or <i>foreign financial regulatory authority</i> ? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) Are you or any <i>advisory affiliate</i> now the subject of any civil <i>proceeding</i> that could result in a "yes" answer to any part of Item 11.H(1)? | <input type="radio"/> | <input checked="" type="radio"/> |

Item 12 Small Businesses

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7.

Answer this Item 12 only if you are registered or registering with the SEC and you indicated in response to Item 5.F(2)(c) that you have assets under management of less than \$25 million. You are not required to answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC
ADV - SEC, Page 16
8/25/2006 10:20:03 AM

CRD Number:
2625
Rev. 02/2005

Item 12 Small Businesses (Continued)

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of *clients*. In determining your or another *person's* total assets, you may use the total assets shown

on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).

- Control means the power to direct or cause the direction of the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another *person* is presumed to control the other *person*.

YES NO

A. Did you have total assets of \$5 million or more on the last day of your most recent fiscal year? ☐ YES ☐ NO

If "yes," you do not need to answer Items 12.B. and 12.C.

B. Do you:

(1) *control* another investment adviser that had assets under management of \$25 million or more on the last day of its most recent fiscal year? ☐ YES ☐ NO

(2) *control* another *person* (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year? ☐ YES ☐ NO

C. Are you:

(1) *controlled* by or under common *control* with another investment adviser that had assets under management of \$25 million or more on the last day of its most recent fiscal year? ☐ YES ☐ NO

(2) *controlled* by or under common *control* with another *person* (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year? ☐ YES ☐ NO

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES

CRD Number:

LLC

2625

ADV - SEC, Part 1B, Page 1

Rev. 02/2005

8/25/2006 10:20:03 AM

You must complete this Part 1B only if you are applying for registration, or are registered, as an investment adviser with any of the *state securities authorities*.

Part 1B Item 1 - State Registration

Complete this Item 1 if you are submitting an initial application for state registration or requesting additional state registration(s). Check the boxes next to the states to which you are submitting this application. If you are already registered with at least one state and are applying for registration with an additional state or states, check the boxes next to the states in which you are applying for registration. Do not check the boxes next to the states in which you are currently registered or where you have an application for registration pending.

☐ AL
☐ AK

☐ ID
☐ IL

☐ MO
☐ MT

☐ PA
☐ PR

<input type="checkbox"/> AZ	<input type="checkbox"/> IN	<input type="checkbox"/> NE	<input type="checkbox"/> RI
<input type="checkbox"/> AR	<input type="checkbox"/> IA	<input type="checkbox"/> NV	<input type="checkbox"/> SC
<input type="checkbox"/> CA	<input type="checkbox"/> KS	<input type="checkbox"/> NH	<input type="checkbox"/> SD
<input type="checkbox"/> CO	<input type="checkbox"/> KY	<input type="checkbox"/> NJ	<input type="checkbox"/> TN
<input type="checkbox"/> CT	<input type="checkbox"/> LA	<input type="checkbox"/> NM	<input type="checkbox"/> TX
<input type="checkbox"/> DE	<input type="checkbox"/> ME	<input type="checkbox"/> NY	<input type="checkbox"/> UT
<input type="checkbox"/> DC	<input type="checkbox"/> MD	<input type="checkbox"/> NC	<input type="checkbox"/> VT
<input type="checkbox"/> FL	<input type="checkbox"/> MA	<input type="checkbox"/> ND	<input type="checkbox"/> VI
<input type="checkbox"/> GA	<input type="checkbox"/> MI	<input type="checkbox"/> OH	<input type="checkbox"/> VA
<input type="checkbox"/> GU	<input type="checkbox"/> MN	<input type="checkbox"/> OK	<input type="checkbox"/> WA
<input type="checkbox"/> HI	<input type="checkbox"/> MS	<input type="checkbox"/> OR	<input type="checkbox"/> WV
			<input type="checkbox"/> WI

Part 1B Item 2 - Additional Information

A. Person responsible for supervision and compliance:

Name:

Title:

Telephone:

Fax:

Number and Street 1:

Number and Street 2:

City:

State:

Country:

ZIP+4/Postal Code:

Email address, if available:

If this address is a private residence, check this box: ☐

B. Bond/Capital Information, if required by your home state.

(1) Name of Issuing Insurance Company:

(2) Amount of Bond:

\$.00

(3) Bond Policy Number:

Yes No

(4) If required by your home state, are you in compliance with your home state's minimum capital requirements? ☐ ☐

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT SECURITIES**
LLC

CRD Number:
2625

ADV - SEC, Part 1B, Page 2

Rev. 02/2005

8/25/2006 10:20:03 AM

Part 1B Item 2 - Additional Information (Continued)

	Yes	No
For "yes" answers to the following question, complete a Bond DRP.		
C. Has a bonding company ever denied, paid out on, or revoked a bond for you?	<input type="radio"/>	<input type="radio"/>
For "yes" answers to the following question, complete a Judgment/Lien DRP:		
D. Do you have any unsatisfied judgments or liens against you?	<input type="radio"/>	<input type="radio"/>
For "yes" answers to the following questions, complete an Arbitration DRP:		
E. Are you, any <i>advisory affiliate</i> , or any <i>management person</i> currently the subject of, or have you, any <i>advisory affiliate</i> , or any <i>management person</i> been the subject of, an arbitration claim alleging damages in excess of \$2,500, involving any of the following:		
(1) any investment or an <i>investment-related</i> business of activity?	<input type="radio"/>	<input type="radio"/>
(2) fraud, false statement, or omission?	<input type="radio"/>	<input type="radio"/>
(3) theft, embezzlement, or other wrongful taking of property?	<input type="radio"/>	<input type="radio"/>
(4) bribery, forgery, counterfeiting, or extortion?	<input type="radio"/>	<input type="radio"/>
(5) dishonest, unfair, or unethical practices?	<input type="radio"/>	<input type="radio"/>
For "yes" answers to the following questions, complete a Civil Judicial Action DRP:		
F. Are you, any <i>advisory affiliate</i> , or any <i>management person</i> currently subject to, or have you, any <i>advisory affiliate</i> , or any <i>management person</i> been <i>found</i> liable in, a civil, <i>self-regulatory organization</i> , or administrative <i>proceeding</i> involving any of the following:		
(1) an investment or <i>investment-related</i> business or activity?	<input type="radio"/>	<input type="radio"/>
(2) fraud, false statement, or omission?	<input type="radio"/>	<input type="radio"/>
(3) theft, embezzlement, or other wrongful taking of property?	<input type="radio"/>	<input type="radio"/>
(4) bribery, forgery, counterfeiting, or extortion?	<input type="radio"/>	<input type="radio"/>
(5) dishonest, unfair, or unethical practices?	<input type="radio"/>	<input type="radio"/>
G. Other Business Activities		
(1) You are actively engaged in business as a(n) (check all that apply):		
<input type="checkbox"/> Attorney		
<input type="checkbox"/> Certified Public Accountant		
<input type="checkbox"/> Tax Preparer		

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT SECURITIES**
LLC

CRD Number:
2625

ADV - SEC, Part 1B, Page 3

Rev. 02/2005

8/25/2006 10:20:03 AM

Part 1B Item 2 - Additional Information (Continued)

- (2) If you are actively engaged in any business other than those listed in Item 6.A of Part 1A or Item 2.G(1) of Part 1B, describe the business and the approximate amount of time spent on that business:

H. If you provide financial planning services, the investments made based on those services at the end of your last fiscal year totaled:

	Securities Investments	Non-Securities Investments
Under \$100,000	<input type="radio"/>	<input type="radio"/>
\$100,001 to \$500,000	<input type="radio"/>	<input type="radio"/>
\$500,001 to \$1,000,000	<input type="radio"/>	<input type="radio"/>
\$1,000,001 to \$2,500,000	<input type="radio"/>	<input type="radio"/>
\$2,500,001 to \$5,000,000	<input type="radio"/>	<input type="radio"/>
More than \$5,000,000	<input type="radio"/>	<input type="radio"/>

If securities investments are over \$5,000,000, how much? (round to the nearest \$1,000,000)

If non-securities investments are over \$5,000,000, how much? (round to the nearest \$1,000,000)

I. Custody

- | | Yes | No |
|--|-----------------------|-----------------------|
| (1) Do you withdraw advisory fees directly from your <i>clients'</i> accounts? If you answered "yes", respond to the following: | <input type="radio"/> | <input type="radio"/> |
| (a) Do you send a copy of your invoice to the custodian or trustee at the same time that you send a copy to the <i>client</i> ? | <input type="radio"/> | <input type="radio"/> |
| (b) Does the custodian send quarterly statements to your <i>clients</i> showing all disbursements for the custodian account, including the amount of the advisory fees? | <input type="radio"/> | <input type="radio"/> |
| (c) Do your <i>clients</i> provide written authorization permitting you to be paid directly for their accounts held by the custodian or trustee? | <input type="radio"/> | <input type="radio"/> |
| (2) Do you act as a general partner for any partnership or trustee for any trust in which your advisory <i>clients</i> are either partners of the partnership or beneficiaries of the trust? If you answered "yes", respond to the following: | <input type="radio"/> | <input type="radio"/> |
| (a) As the general partner of a partnership, have you engaged an attorney or an independent certified public accountant to provide authority permitting each direct payment or any transfer of funds or securities from the partnership account? | <input type="radio"/> | <input type="radio"/> |
| (3) Do you require the prepayment of fees of more than \$500 per <i>client</i> and for six months or more in advance? | <input type="radio"/> | <input type="radio"/> |

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

**Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC**

**CRD Number:
2625**

ADV - SEC, Part 1B, Page 4

Rev. 02/2005

8/25/2006 10:20:03 AM

Part 1B Item 2 - Additional Information (Continued)

	Yes	No
J. If you are organized as a sole proprietorship, please answer the following:		
(1) (a) Have you passed, on or after January 1, 2000, the Series 65 examination?	<input type="radio"/>	<input type="radio"/>
(b) Have you passed, on or after January 1, 2000, the Series 66 examination and also passed, at any time, the Series 7 examination?	<input type="radio"/>	<input type="radio"/>
(2) (a) Do you have any investment advisory professional designations? <i>If "no", you do not need to answer Item 2.J(2)(b).</i>	<input type="radio"/>	<input type="radio"/>
(b) I have earned and I am in good standing with the organization that issued the following credential:		
<input type="checkbox"/> Certified Financial Planner ("CFP")		
<input type="checkbox"/> Chartered Financial Analyst ("CFA")		
<input type="checkbox"/> Chartered Financial Consultant ("ChFC")		
<input type="checkbox"/> Chartered Investment Counselor ("CIC")		
<input type="checkbox"/> Personal Financial Specialist ("PFS")		
<input type="checkbox"/> None of the above		
(3) Your Social Security Number:		

**FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

**Primary Business Name: BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**

CRD Number: 2625

ADV-SEC, Part 2

Rev. 02/2005

8/25/2006 10:20:03 AM

Amend, retire or file new brochures:

**FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

**Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC**

**CRD Number:
2625**

ADV - SEC, SCHEDULE A

Rev. 02/2005

8/25/2006 10:20:03 AM

Form ADV, Schedule A

Direct Owners and Executive Officers

1. Complete Schedule A only if you are submitting an initial application. Schedule A asks for information about your direct owners and executive officers. Use Schedule C to amend this information.
2. Direct Owners and Executive Officers. List below the names of:
 - (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer(Chief Compliance Officer is required and cannot be more than one individual), director, and any other individuals with similar status or functions;
 - (b) if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);

Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

- (c) if you are organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;
 - (d) in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and
 - (e) if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.
3. Do you have any indirect owners to be reported on Schedule B? ☐ Yes ☒ No
 4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner or executive officer is an individual.
 5. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).
 6. Ownership codes

NA - less than 5%	B - 10% but less than 25%	D - 50% but less than 75%
A - 5% but less than 10%	C - 25% but less than 50%	E - 75% or more
 7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
 (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
 (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired MM/YYYY	Ownership Code	Control Person	PR	CRD No. If None: S.S. No. and Date of Birth, IRS Tax No., or Employer ID No.
MADOFF, BERNARD LAWRENCE	I	SOLE MEMBER/PRINCIPAL	01/2001	E	Y	N	316687
MADOFF, PETER BARNETT	I	DIRECTOR OF TRADING/CHIEF COMPLIANCE OFFICER	06/1969	NA	Y	N	316688

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

**Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC**

**CRD Number:
2625**

**ADV - SEC, SCHEDULE B
8/25/2006 10:20:03 AM**

Rev. 02/2005

Form ADV, Schedule B

Indirect Owners

- Complete Schedule B only if you are submitting an initial application. Schedule B asks for information about your indirect owners; you must first complete Schedule A, which asks for information about your direct owners. Use Schedule C to amend this information.
- Indirect Owners. With respect to each owner listed on Schedule A (except individual owners), list below:
 - in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

 - in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;
 - in the case of an owner that is a trust, the trust and each trustee; and
 - in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.
- Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further

ownership information need be given.

4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.
5. Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).
6. Ownership codes are:

C - 25% but less than 50%	E - 75% or more
D - 50% but less than 75%	F - Other (general partner, trustee, or elected manager)
7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
(b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
(c) Complete each column.

No Indirect Owner Information Filed

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES

CRD Number:

LLC

2625

ADV - SEC, SCHEDULE C

Rev. 02/2005

8/25/2006 10:20:03 AM

Form ADV, Schedule C

Amendments to Schedules A and B

1. Use Schedule C only to amend information requested on either Schedule A or Schedule B. Refer to Schedule A and Schedule B for specific instructions for completing this Schedule C. Complete each column.
2. In the Type of Amendment column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).
3. Ownership codes are:

NA - less than 5%	C - 25% but less than 50%	G - Other (general partner, trustee, or elected member)
A - 5% but less than 10%	D - 50% but less than 75%	
B - 10% but less than 25%	E - 75% or more	

4. List below all changes to Schedule A (Direct Owners and Executive Officers):

No Changes to Direct Owner / Executive Officer Information Filed

5. List below all changes to Schedule B (Indirect Owners):

No Changes to Indirect Owner Information Filed

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC

CRD Number:
2625

ADV - SEC, SCHEDULE D Page 1

Rev. 02/2005

8/25/2006 10:20:03 AM

Form ADV, Schedule D Page 1

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D Page 1 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

Section 1.B. Other Business Names

List your other business names and the jurisdictions in which you use them. You must complete a separate Schedule D for each business name.

No Information Filed

Section 1.F. Other Offices

Complete the following information for each office, other than your *principal office and place of business*, at which you conduct investment advisory business. You must complete a separate Schedule D Page 1 for each location. If you are applying for registration, or are registered, only with the SEC, list only the largest five (in terms of numbers of *employees*).

No Information Filed

Section 1.I. World Wide Web Site Addresses

List your World Wide Web site addresses. You must complete a separate Schedule D for each World Wide Web site address.

World Wide Web Site Address: WWW.MADOFF.COM

Section 1.K. Locations of Books and Records

Complete the following information for each location at which you keep your books and records, other than your *principal office and place of business*. You must complete a separate Schedule D Page 1 for each location.

No Information Filed

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC

CRD Number:
2625

ADV - SEC, SCHEDULE D, Page 2

Rev. 02/2005

8/25/2006 10:20:03 AM

Form ADV, Schedule D Page 2

Use this Schedule D Page 2 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

Section 1.L. Registration with *Foreign Financial Regulatory Authorities*

List the name, in English, of each *foreign financial regulatory authority* and country with which you are registered. You must complete a separate Schedule D Page 2 for each *foreign financial regulatory authority* with whom you are registered.

No Information Filed

Section 2.A(7) Affiliated Adviser

No Information Filed

Section 2.A(8) Newly Formed Adviser

If you are relying on rule 203A-2(d), the newly formed adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations. You must make both of these representations:

- ☐ I am not registered or required to be registered with the SEC or a *state securities authority* and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.
- ☐ I undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

Section 2.A(9) Multi-State Adviser

If you are relying on rule 203A-2(e), the multi-state adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations.

If you are applying for registration as an investment adviser with the SEC, you must make both of these representations:

- ☐ I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 30 or more states to register as an investment adviser with the securities authorities in those states.
- ☐ I undertake to withdraw from SEC registration if I file an amendment to this registration indicating that I would be required by the laws of fewer than 25 states to register as an investment adviser with the securities authorities of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

- ☐ Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of at least 25 states to register as an investment adviser with the securities authorities in those states.

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES

CRD Number:

LLC

2625

ADV - SEC, SCHEDULE D, Page 3

Rev. 02/2005

8/25/2006 10:20:03 AM

Form ADV, Schedule D Page 3

Use this Schedule D Page 3 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

Section 2.A(11) SEC Exemptive Order

No Information Filed

Section 4 Successions

Complete the following information if you are succeeding to the business of a currently-registered investment adviser. If you acquired more than one firm in the succession you are reporting on this Form ADV, you must complete a separate Schedule D Page 3 for each acquired firm. See Part 1A Instruction 4.

No Information Filed

Section 5.I(2) Wrap Fee Programs

If you are a portfolio manager for one or more *wrap fee programs*, list the name of each program and its *sponsor*. You must complete a separate Schedule D Page 3 for each *wrap fee program* for which you are a portfolio manager.

No Information Filed

Section 6.B. Description of Primary Business

No Information Filed

Section 7.A. Affiliated Investment Advisers and Broker-Dealers

You MUST complete the following information for each investment adviser with whom you are affiliated. You MAY complete the following information for each broker-dealer with whom you are affiliated. You must complete a separate Schedule D Page 3 for each listed affiliate.

No Information Filed

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES

CRD Number:

LLC

2625

ADV - SEC, SCHEDULE D, Page 4

Rev. 02/2005

8/25/2006 10:20:03 AM

Form ADV, Schedule D Page 4

Use this Schedule D Page 4 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

Section 7.B. Limited Partnership Participation or Other Private Fund Participation

You must complete a separate Schedule D Page 4 for each limited partnership in which you or a *related person* is a general partner, each limited liability company for which you or a *related person* is a manager, and each other private fund that you advise.

No Information Filed

Section 10 Control Persons

You must complete a separate Schedule D Page 4 for each *control person* not named in Item 1.A. or Schedules A, B, or C that directly or indirectly *controls* your management or policies.

No Information Filed

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

**Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC**

**CRD Number:
2625**

**ADV - SEC, SCHEDULE D, Page 5
8/25/2006 10:20:03 AM**

Rev. 02/2005

Form ADV, Schedule D Page 5

Use this Schedule D Page 5 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

Schedule D - Miscellaneous

You may use the space below to explain a response to an Item or to provide any other information.

No Information Filed

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

**Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES
LLC**

**CRD Number:
2625**

**ADV - SEC, DRP Pages
8/25/2006 10:20:03 AM**

Rev. 02/2005

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☒ INITIAL **OR** ☐ AMENDED response used to report details for affirmative responses to Items 11.C., 11.D., 11.E., 11.F. or 11.G. of Form ADV.

Check item(s) being responded to:

Regulatory Action

- | | | | |
|----------------------------------|----------------------------------|---|----------------------------------|
| <input type="checkbox"/> 11.C(1) | <input type="checkbox"/> 11.C(5) | <input type="checkbox"/> 11.D(4) | <input type="checkbox"/> 11.E(3) |
| <input type="checkbox"/> 11.C(2) | <input type="checkbox"/> 11.D(1) | <input type="checkbox"/> 11.D(5) | <input type="checkbox"/> 11.E(4) |
| <input type="checkbox"/> 11.C(3) | <input type="checkbox"/> 11.D(2) | <input type="checkbox"/> 11.E(1) | <input type="checkbox"/> 11.F |
| <input type="checkbox"/> 11.C(4) | <input type="checkbox"/> 11.D(3) | <input checked="" type="checkbox"/> 11.E(2) | <input type="checkbox"/> 11.G |

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for

more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11.C., 11.D., 11.E., 11.F. or 11.G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details to each action on a separate DRP.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ☒ You (the advisory firm)
☐ You and one or more of your *advisory affiliates*
☐ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a CRD number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

ADV DRP - ADVISORY AFFILIATE

No Information Filed

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

☐ This DRP should be removed from the ADV record because: (1) the event or *proceeding* occurred more than ten years ago or (2) the adviser is registered or applying for registration with the SEC and the event was resolved in the adviser's or *advisory affiliate's* favor.

If you are registered or registering with a *state securities authority*, you may remove a DRP for an event you reported only in response to Item 11.D(4), and only if that event occurred more than ten years ago. If you are registered or registering with the SEC, you may remove a DRP for any event listed in Item 11 that occurred more than ten years ago.

B. If the *advisory affiliate* is registered through the IARD system or CRD system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or CRD for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or CRD records.

PART II

1. Regulatory Action initiated by:

☐ SEC ☐ Other Federal ☐ State ☒ SRO ☐ Foreign

(Full name of regulator, *foreign financial regulatory authority*, federal, state, or SRO)

NASD

2. Principal Sanction:

Other Sanctions:

3. Date Initiated (MM/DD/YYYY):

07/06/2005 ☒ Exact ☐ Explanation

If not exact, provide explanation:

4. Docket/Case Number:

CLG050081

5. *Advisory Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type:

No Product

Other Product Types:

7. Describe the allegations related to this regulatory action (your response must fit within the space provided):

SEC RULE 11AC1-4 - THE FIRM FAILED TO DISPLAY IMMEDIATELY CUSTOMER LIMIT ORDERS IN NASDAQ SECURITIES IN ITS PUBLIC QUOTATION, WHEN EACH SUCH ORDER WAS AT A PRICE THAT WOULD HAVE IMPROVED THE FIRM'S BID OR OFFER IN EACH SUCH SECURITY; OR WHEN THE ORDER WAS PRICED EQUAL TO THE FIRM'S BID OR OFFER AND THE NATIONAL BEST BID OR OFFER FOR EACH SECURITY, AND THE SIZE OF THE ORDER REPRESENTED MORE THAN A DE MINIMUS CHANGE IN RELATION TO THE SIZE ASSOCIATED WITH THE FIRM'S BID OR OFFER IN EACH SECURITY

8. Current status ? ☐ Pending ☐ On Appeal ☒ Final

9. If on appeal, regulatory action appealed to (SEC, SRO, Federal or State Court) and Date Appeal Filed:

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved:

Acceptance, Waiver & Consent(AWC)

11. Resolution Date (MM/DD/YYYY):

07/06/2005 ☒ Exact ☐ Explanation

If not exact, provide explanation:

12. Resolution Detail:

A. Were any of the following Sanctions *Ordered* (check all appropriate items)?

☒ Monetary/Fine Amount:\$ 7000

☐ Revocation/Expulsion/Denial

☐ Disgorgement/Restitution

☒ Censure

☐ Cease and Desist/Injunction

☐ Bar

☐ Suspension

B. Other Sanctions Ordered:

Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:

WITHOUT ADMITTING OR DENYING THE ALLEGATIONS, THE FIRM CONSENTED TO THE DESCRIBED SANCTIONS AND TO THE ENTRY OF FINDINGS, THEREFORE THE FIRM IS CENSURED AND FINED \$7,000.00.

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates (your response must fit within the space provided.)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

Bond DRPs

No Information Filed

Judgment/Lien DRPs

No Information Filed

Arbitration DRPs

No Information Filed

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES

CRD Number:

LLC

2625

ADV - SEC, Execution Pages

Rev. 02/2005

8/25/2006 10:20:03 AM

DOMESTIC INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business* and any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such *persons* may accept service on your behalf, of any notice, subpoena,

summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are submitting a *notice filing*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature:	Date: MM/DD/YYYY
BERNARD L. MADOFF	08/22/2006
Printed Name:	Title:
BERNARD L. MADOFF	SOLE MEMBER
Adviser CRD Number:	
2625	

NON-RESIDENT INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State or other legally designated officer, of any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such *persons* may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding*, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of any state in which you are submitting a *notice filing*.

2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

3. *Non-Resident* Investment Adviser Undertaking Regarding Books and Records

By signing this Form ADV, you also agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the Commission, or at any one of its offices in the United States, as specified by the Commission, correct, current, and complete copies of any or all records that you are required to maintain under Rule 204-2 under the Investment Advisers Act of 1940. This undertaking shall be binding upon you, your heirs, successors and assigns, and any *person* subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: _____ Date: MM/DD/YYYY

Printed Name: _____ Title: _____

Adviser CRD Number:
2625

State Registered Investment Adviser Execution Page

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for state registration and all amendments to registration.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the legally designated officers and their successors, of the state in which you maintain your *principal office and place of business* and any other state in which you are applying for registration or amending your registration, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding*, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of

1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are applying for registration or amending your registration.

2. State-Registered Investment Adviser Affidavit

If you are subject to state regulation, by signing this Form ADV, you represent that, you are in compliance with the registration requirements of the state in which you maintain your principal place of business and are in compliance with the bonding, capital, and recordkeeping requirements of that state.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature	Date MM/DD/YYYY
CRD Number 2625	
Printed Name	Title

Privacy : Legal Use of Web CRD® or IARDSM is governed by the Terms & Conditions.

©2008 FINRA. All rights reserved. FINRA is a trademark of the Financial Industry Regulatory Authority, Inc.

Exhibit 76

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATIONPrimary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**IARD/CRD Number:
2625

Rev. 02/2005

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 3.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you.

- A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):
BERNARD L. MADOFF INVESTMENT SECURITIES LLC
- B. Name under which you primarily conduct your advisory business, if different from Item 1.A.
BERNARD L. MADOFF INVESTMENT SECURITIES LLC
List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.
- C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.), enter the new name and specify whether the name change is of
☐ your legal name or ☐ your primary business name:
- D. If you are registered with the SEC as an investment adviser, your SEC file number:
801- **67134**
- E. If you have a number ("CRD Number") assigned by NASD's CRD system or by the IARD system, your CRD number: **2625**
If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

F. *Principal Office and Place of Business*

(1) Address (do not use a P.O. Box):

Number and Street 1:

Number and Street 2:

885 THIRD AVENUE

City:

State:

Country:

ZIP+4/Postal Code:

NEW YORK**NY****USA****10022**If this address is a private residence, check this box: ☐

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more state securities authorities, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for registration, or are registered only, with the SEC, list the largest five offices in terms of numbers of employees.

(2) Days of week that you normally conduct business at your principal office and place of business:



Monday-Friday



Other:

Normal business hours at this location:

9AM - 5PM

(3) Telephone number at this location:

212-230-2424

(4) Facsimile number at this location:

212-486-8178

G. Mailing address, if different from your *principal office and place of business* address:

Number and Street 1:

Number and Street 2:

City:

State:

Country:

ZIP+4/Postal Code:

If this address is a private residence, check this box: ☐H. If you are a sole proprietor, state your full residence address, if different from your *principal office and place of business* address in Item 1.F.:

Number and Street 1:

Number and Street 2:

City:

State:

Country:

ZIP+4/Postal Code:

YES NO

I. Do you have World Wide Web site addresses? ☒ ☐

If "yes," list these addresses on Section 1.I. of Schedule D. If a web address serves as a portal through which to access other information you have published on the World Wide Web, you may list the portal without listing addresses for all of the other information. Some advisers may need to list more than one portal address. Do not provide individual electronic mail addresses in response to this Item.

J. Contact *Employee*:

Name:

Title:

Telephone Number:

Facsimile Number:

Number and Street 1:

Number and Street 2:

City:

State:

Country:

ZIP+4/Postal Code:

Electronic mail (e-mail) address, if contact *employee* has one:

The contact *employee* should be an *employee* whom you have authorized to receive information and respond to questions about this Form ADV.

YES NO

K. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your *principal office and place of business*? ☐ ☒

If "yes," complete Section 1.K. of Schedule D.

YES NO

L. Are you registered with a *foreign financial regulatory authority*? ☐ ☒

Answer "no" if you are not registered with a *foreign financial regulatory authority*, even if you have an *affiliate* that is registered with a *foreign financial regulatory authority*. If "yes", complete Section 1.L. of Schedule D.

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION
Primary Business Name: BERNARD L. MADOFF INVESTMENT
SECURITIES LLC

IARD/CRD Number:
2625

Rev. 02/2005

Item 2 SEC Registration

Responses to this Item help us (and you) determine whether you are eligible to register with the

SEC. Complete this Item 2 only if you are applying for SEC registration or submitting an *annual updating amendment* to your SEC registration.

A. To register (or remain registered) with the SEC, you must check at least one of the Items 2.A(1) through 2.A(11), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A(12). You:

☒ (1) have *assets under management* of \$25 million (in U.S. dollars) or more;

See Part 1A Instruction 2.a. to determine whether you should check this box.

☐ (2) have your *principal office and place of business* in Wyoming;

☐ (3) have your *principal office and place of business* outside the United States;

☐ (4) are an investment adviser (or sub-adviser) to an investment company registered under the Investment Company Act of 1940;

See Part 1A Instruction 2.b. to determine whether you should check this box.

☐ (5) have been designated as a nationally recognized statistical rating organization;

See Part 1A Instruction 2.c. to determine whether you should check this box.

☐ (6) are a pension consultant that qualifies for the exemption in rule 203A-2(b);

See Part 1A Instruction 2.d. to determine whether you should check this box.

☐ (7) are relying on rule 203A-2(c) because you are an investment adviser that *controls*, is *controlled by*, or is under common *control* with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;

See Part 1A Instruction 2.e. to determine whether you should check this box. If you check this box, complete Section 2.A(7) of Schedule D.

☐ (8) are a newly formed adviser relying on rule 203A-2(d) because you expect to be eligible for SEC registration within 120 days;

See Part 1A Instruction 2.f. to determine whether you should check this box. If you check this box, complete Section 2.A(8) of Schedule D.

☐ (9) are a multi-state adviser relying on rule 203A-2(e);

See Part 1A Instruction 2.g. to determine whether you should check this box. If you check this box, complete Section 2.A(9) of Schedule D.

☐ (10) are an Internet investment adviser relying on rule 203A-2(f);

See Part 1A Instructions 2.h. to determine whether you should check this box.

☐ (11) have received an SEC *order* exempting you from the prohibition against registration with the SEC;

If you checked this box, complete Section 2.A(11) of Schedule D.

☐ (12) are no longer eligible to remain registered with the SEC.

See Part 1A Instructions 2.i. to determine whether you should check this box.

B. Under state laws, SEC-registered advisers may be required to provide to *state securities authorities* a copy of the Form ADV and any amendments they file with the SEC. These are called *notice filings*. If this is an initial application, check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to direct your *notice filings* to additional state(s), check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to your registration to stop your *notice filings* from going to state(s) that currently receive them, uncheck the box(es) next to those state(s).

<input type="checkbox"/> AL	<input type="checkbox"/> ID	<input type="checkbox"/> MO	<input type="checkbox"/> PA
<input type="checkbox"/> AK	<input type="checkbox"/> IL	<input type="checkbox"/> MT	<input type="checkbox"/> PR
<input type="checkbox"/> AZ	<input type="checkbox"/> IN	<input type="checkbox"/> NE	<input type="checkbox"/> RI
<input type="checkbox"/> AR	<input type="checkbox"/> IA	<input type="checkbox"/> NV	<input type="checkbox"/> SC
<input type="checkbox"/> CA	<input type="checkbox"/> KS	<input type="checkbox"/> NH	<input type="checkbox"/> SD
<input type="checkbox"/> CO	<input type="checkbox"/> KY	<input type="checkbox"/> NJ	<input type="checkbox"/> TN
<input type="checkbox"/> CT	<input type="checkbox"/> LA	<input type="checkbox"/> NM	<input type="checkbox"/> TX
<input type="checkbox"/> DE	<input type="checkbox"/> ME	<input checked="" type="checkbox"/> NY	<input type="checkbox"/> UT
<input type="checkbox"/> DC	<input type="checkbox"/> MD	<input type="checkbox"/> NC	<input type="checkbox"/> VT
<input type="checkbox"/> FL	<input type="checkbox"/> MA	<input type="checkbox"/> ND	<input type="checkbox"/> VI
<input type="checkbox"/> GA	<input type="checkbox"/> MI	<input type="checkbox"/> OH	<input type="checkbox"/> VA
<input type="checkbox"/> GU	<input type="checkbox"/> MN	<input type="checkbox"/> OK	<input type="checkbox"/> WA
<input type="checkbox"/> HI	<input type="checkbox"/> MS	<input type="checkbox"/> OR	<input type="checkbox"/> WV
			<input type="checkbox"/> WI

If you are amending your registration to stop your notice filings from going to a state that currently receives them and you do not want to pay that state's notice filing fee for the coming year, your amendment must be filed before the end of the year (December 31).

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**

IARD/CRD Number:
2625

Rev. 02/2005

Item 3 Form Of Organization

A. How are you organized?

- ☐ Corporation
 ☐ Sole Proprietorship
 ☐ Limited Liability Partnership (LLP)
 ☐ Partnership
 ☒ Limited Liability Company (LLC)
 ☐ Other (specify):

If you are changing your response to this Item, see Part 1A Instruction 4.

B. In what month does your fiscal year end each year?

October

C. Under the laws of what state or country are you organized?

NEW YORK

If you are a partnership, provide the name of the state or country under whose laws your partnership was formed. If you are a sole proprietor, provide the name of the state or country where you reside.

If you are changing your response to this Item, see Part 1A Instruction 4.

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**

IARD/CRD Number:
2625

Rev. 02/2005

Item 4 Successions

YES NO

A. Are you, at the time of this filing, succeeding to the business of a registered investment adviser? ☐ ☒

If "yes," complete Item 4.B. and Section 4 of Schedule D.

B. Date of Succession: (MM/DD/YYYY)

If you have already reported this succession on a previous Form ADV filing, do not report the succession again. Instead, check "No." See Part 1A Instruction 4.

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**

IARD/CRD Number:
2625

Rev. 02/2005

Item 5 Information About Your Advisory Business

Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly-formed advisers for completing this Item 5.

Employees

A. Approximately how many *employees* do you have? Include full and part-time *employees* but do not include any clerical workers.

- ☐ 1- 5 ☐ 6-10 ☐ 11-50 ☒ 51-250 ☐ 251-500
☐ 501-1,000 ☐ More than 1,000 If more than 1,000, how many? (round to the nearest 1,000)

B.

(1) Approximately how many of these *employees* perform investment advisory functions (including research)?

- ☐ 0 ☒ 1-5 ☐ 6-10 ☐ 11-50 ☐ 51-250
☐ 251-500 ☐ 501-1,000 ☐ More than 1,000 If more than 1,000, how many? (round to the nearest 1,000)

(2) Approximately how many of these *employees* are registered representatives of a broker-dealer?

- ☐ 0 ☐ 1-5 ☐ 6-10 ☐ 11-50 ☒ 51-250
☐ 251-500 ☐ 501-1,000 ☐ More than 1,000 If more than 1,000, how many? (round to the nearest 1,000)

If you are organized as a sole proprietorship, include yourself as an employee in your responses to Items 5.A(1) and 5.B(2). If an employee performs more than one function, you should count that employee in each of your responses to Item 5.B(1) and 5.B(2).

(3) Approximately how many firms or other *persons* solicit advisory *clients* on your behalf?

- ☒ 0 ☐ 1-5 ☐ 6-10 ☐ 11-50 ☐ 51-250
☐ 251-500 ☐ 501-1,000 ☐ More than 1,000 If more than 1,000, how many? (round to the nearest 1,000)

In your response to Item 5.B(3), do not count any of your employees and count a firm only once -- do not count each of the firm's employees that solicit on your behalf.

Clients

C. To approximately how many *clients* did you provide investment advisory services during your most-recently completed fiscal year?

- ☐ 0 ☐ 1-10 ☒ 11-25 ☐ 26-100 ☐ 101-250
☐ 251-500 ☐ More than 500 If more than 500, how many? (round to the nearest 500)

D. What types of *clients* do you have? Indicate the approximate percentage that each type of *client* comprises of your total number of *clients*.

- | | None | Up to 10% | 11-25% | 26-50% | 51-75% | More Than 75% |
|---|----------------------------------|----------------------------------|----------------------------------|-----------------------|-----------------------|-----------------------|
| (1) Individuals (other than <i>high net worth individuals</i>) | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (2) <i>High net worth individuals</i> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (3) Banking or thrift institutions | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (4) Investment companies (including mutual funds) | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (5) Pension and profit sharing plans (other than | | | | | | |

- | | | | | | | |
|--|----------------------------------|----------------------------------|----------------------------------|-----------------------|----------------------------------|-----------------------|
| plan participants) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (6) Other pooled investment vehicles (e.g., hedge funds) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| (7) Charitable organizations | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (8) Corporations or other businesses not listed above | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (9) State or municipal <i>government entities</i> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (10) Other: | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

The category "individuals" includes trusts, estates, 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.

Unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, check "None" in response to Item 5.D(4).

Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

- ☐ (1) A percentage of assets under your management
- ☐ (2) Hourly charges
- ☐ (3) Subscription fees (for a newsletter or periodical)
- ☐ (4) Fixed fees (other than subscription fees)
- ☒ (5) Commissions
- ☐ (6) *Performance-based fees*
- ☐ (7) Other (specify):

Assets Under Management

- | | | YES | NO |
|---|-----------------------|----------------------------------|--------------------------|
| F. (1) Do you provide continuous and regular supervisory or management services to securities portfolios? | | <input checked="" type="radio"/> | <input type="radio"/> |
| (2) If yes, what is the amount of your assets under management and total number of accounts? | | | |
| | U.S. Dollar Amount | | Total Number of Accounts |
| Discretionary: | (a) \$ 17091640696.00 | | (d) 23 |
| Non-Discretionary: | (b) \$ 0.00 | | (e) 0 |
| Total: | (c) \$ 17091640696.00 | | (f) 23 |

Part 1A Instruction 5.b. explains how to calculate your assets under management. You must follow these instructions carefully when completing this Item.

Advisory Activities

G. What type(s) of advisory services do you provide? Check all that apply.

- ☐ (1) Financial planning services
- ☒ (2) Portfolio management for individuals and/or small businesses
- ☐ (3) Portfolio management for investment companies
- ☒ (4) Portfolio management for businesses or institutional *clients* (other than investment companies)

- ☐ (5) Pension consulting services
- ☐ (6) Selection of other advisers
- ☐ (7) Publication of periodicals or newsletters
- ☐ (8) Security ratings or pricing services
- ☐ (9) Market timing services
- ☐ (10) Other (specify):

Do not check Item 5.G(3) unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940.

H. If you provide financial planning services, to how many *clients* did you provide these services during your last fiscal year?

- ☐ 0 ☐ 1-10 ☐ 11-25 ☐ 26-50 ☐ 51-100
- ☐ 101-250 ☐ 251-500 ☐ More than 500 If more than 500, how many?
(round to the nearest 500)

I. If you participate in a *wrap fee program*, do you (check all that apply):

- ☐ (1) *sponsor* the *wrap fee program* ?
- ☐ (2) act as a portfolio manager for the *wrap fee program*?

If you are a portfolio manager for a wrap fee program, list the names of the programs and their sponsors in Section 5.I(2) of Schedule D.

If your involvement in a wrap fee program is limited to recommending wrap fee programs to your clients, or you advise a mutual fund that is offered through a wrap fee program, do not check either Item 5.I(1) or 5.I(2).

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**

IARD/CRD Number:
2625

Rev. 02/2005

Item 6 Other Business Activities

In this Item, we request information about your other business activities.

A. You are actively engaged in business as a (check all that apply):

- ☒ (1) Broker-dealer
- ☐ (2) Registered representative of a broker-dealer
- ☐ (3) Futures commission merchant, commodity pool operator, or commodity trading advisor
- ☐ (4) Real estate broker, dealer, or agent
- ☐ (5) Insurance broker or agent
- ☐ (6) Bank (including a separately identifiable department or division of a bank)
- ☐ (7) Other financial product salesperson (specify):

YES NO

B. (1) Are you actively engaged in any other business not listed in Item 6.A. (other than giving investment advice)? ☐ ☒

(2) If yes, is this other business your primary business? ☐ ☐

If "yes," describe this other business on Section 6.B. of Schedule D.

YES NO

(3) Do you sell products or provide services other than investment advice to your advisory *clients*? ☒ ☐

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**

IARD/CRD Number:
2625

Rev. 02/2005

Item 7 Financial Industry Affiliations

In this Item, we request information about your financial industry affiliations and activities. This information identifies areas in which conflicts of interest may occur between you and your *clients*.

Item 7 requires you to provide information about you and your *related persons*. Your *related persons* are all of your *advisory affiliates* and any *person* that is under common *control* with you.

A. You have a *related person* that is a (check all that apply):

- ☒ (1) broker-dealer, municipal securities dealer, or government securities broker or dealer
☐ (2) investment company (including mutual funds)
☐ (3) other investment adviser (including financial planners)
☐ (4) futures commission merchant, commodity pool operator, or commodity trading advisor
☐ (5) banking or thrift institution

- ☐ (6) accountant or accounting firm
- ☐ (7) lawyer or law firm
- ☐ (8) insurance company or agency
- ☐ (9) pension consultant
- ☐ (10) real estate broker or dealer
- ☐ (11) sponsor or syndicator of limited partnerships

If you checked Item 7.A(3), you must list on Section 7.A. of Schedule D all your [related persons](#) that are investment advisers. If you checked Item 7.A(1), you may elect to list on Section 7.A. of Schedule D all your [related persons](#) that are broker-dealers. If you choose to list a related broker-dealer, the IARD will accept a single Form U-4 to register an investment adviser representative who also is a broker-dealer agent ("registered rep") of that related broker-dealer.

YES NO

- B. Are you or any *related person* a general partner in an *investment-related* limited partnership or manager of an *investment-related* limited liability company, or do you advise any other "private fund" as defined under SEC rule 203(b)(3)-1?



If "yes," for each limited partnership or limited liability company, or (if applicable) private fund, complete Section 7.B. of Schedule D. If, however, you are an SEC-registered adviser and you have related persons that are SEC-registered advisers who are the general partners of limited partnerships or the managers of limited liability companies, you do not have to complete Section 7.B. of Schedule D with respect to those related advisers' limited partnerships or limited liability companies.

To use this alternative procedure, you must state in the Miscellaneous Section of Schedule D: (1) that you have related SEC-registered investment advisers that manage limited partnerships or limited liability companies that are not listed in Section 7.B. of your Schedule D; (2) that complete and accurate information about those limited partnerships or limited liability companies is available in Section 7.B. of Schedule D of the Form ADVs of your related SEC-registered advisers; and (3) whether your clients are solicited to invest in any of those limited partnerships or limited liability companies.

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**

IARD/CRD Number:
2625

Rev. 02/2005

Item 8 Participation or Interest in *Client* Transactions

In this Item, we request information about your participation and interest in your *clients'* transactions. Like Item 7, this information identifies areas in which conflicts of interest may occur between you and your *clients*.

Like Item 7, Item 8 requires you to provide information about you and your *related persons*.

Proprietary Interest in *Client* Transactions

- A. Do you or any *related person*:
- | | Yes | No |
|---|----------------------------------|----------------------------------|
| (1) buy securities for yourself from advisory <i>clients</i> , or sell securities you own to advisory <i>clients</i> (principal transactions)? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) buy or sell for yourself securities (other than shares of mutual funds) that you also recommend to advisory <i>clients</i> ? | <input checked="" type="radio"/> | <input type="radio"/> |
| (3) recommend securities (or other investment products) to advisory <i>clients</i> in which you or any <i>related person</i> has some other proprietary (ownership) interest (other than those mentioned in Items 8.A(1) or (2))? | <input type="radio"/> | <input checked="" type="radio"/> |

Sales Interest in *Client* Transactions

- B. Do you or any *related person*:
- | | Yes | No |
|--|-----------------------|----------------------------------|
| (1) as a broker-dealer or registered representative of a broker-dealer, execute securities trades for brokerage customers in which advisory <i>client</i> securities are sold to or bought from the brokerage customer (agency cross transactions)? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) recommend purchase of securities to advisory <i>clients</i> for which you or any <i>related person</i> serves as underwriter, general or managing partner, or purchaser representative? | <input type="radio"/> | <input checked="" type="radio"/> |
| (3) recommend purchase or sale of securities to advisory <i>clients</i> for which you or any <i>related person</i> has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)? | <input type="radio"/> | <input checked="" type="radio"/> |

Investment or Brokerage Discretion

- C. Do you or any *related person* have *discretionary authority* to determine the:
- | | Yes | No |
|--|----------------------------------|----------------------------------|
| (1) securities to be bought or sold for a <i>client's</i> account? | <input checked="" type="radio"/> | <input type="radio"/> |
| (2) amount of securities to be bought or sold for a <i>client's</i> account? | <input checked="" type="radio"/> | <input type="radio"/> |
| (3) broker or dealer to be used for a purchase or sale of securities for a <i>client's</i> account? | <input type="radio"/> | <input checked="" type="radio"/> |
| (4) commission rates to be paid to a broker or dealer for a <i>client's</i> securities transactions? | <input type="radio"/> | <input checked="" type="radio"/> |
- D. Do you or any *related person* recommend brokers or dealers to *clients*? ☐ Yes ☒ No
- E. Do you or any *related person* receive research or other products or services other than execution from a broker-dealer or a third party in connection with *client* securities transactions? ☐ Yes ☒ No
- F. Do you or any *related person*, directly or indirectly, compensate any *person* for *client* referrals? ☐ Yes ☒ No

In responding to this Item 8.F., consider in your response all cash and non-cash compensation that you or a related person gave any person in exchange for client referrals, including any bonus that is based, at least in part, on the number or amount of client referrals.

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

IARD/CRD Number:
2625

Rev. 02/2005

Item 9 Custody

In this Item, we ask you whether you or a *related person* has *custody* of *client* assets. If you are

registering or registered with the SEC and you deduct your advisory fees directly from your *clients'* accounts but you do not otherwise have *custody* of your *clients'* funds or securities, you may answer "no" to Item 9A.(1) and 9A.(2).

A. Do you have *custody* of any advisory *clients'*:

Yes No

(1) cash or bank accounts?

☒ ☐

(2) securities?

☒ ☐

B. Do any of your *related persons* have *custody* of any of your advisory *clients'*:

(1) cash or bank accounts?

☐ ☒

(2) securities?

☐ ☒

C. If you answered "yes" to either Item 9.B(1) or 9.B(2), is that *related person* a broker-dealer registered under Section 15 of the Securities Exchange Act of 1934?

☐ ☐

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**

IARD/CRD Number:
2625

Rev. 02/2005

Item 10 Control Persons

In this Item, we ask you to identify every *person* that, directly or indirectly, *controls* you.

If you are submitting an initial application, you must complete Schedule A and Schedule B. Schedule A asks for information about your direct owners and executive officers. Schedule B asks for information about your indirect owners. If this is an amendment and you are updating information you reported on either Schedule A or Schedule B (or both) that you filed with your initial application, you must complete Schedule C.

Does any *person* not named in Item 1.A. or Schedules A, B, or C, directly or indirectly, *control* your management or policies?

YES NO



If yes, complete Section 10 of Schedule D.

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**

IARD/CRD Number:
2625

Rev. 02/2005

Item 11 Disclosure Information

In this Item, we ask for information about your disciplinary history and the disciplinary history of

all your *advisory affiliates*. We use this information to determine whether to grant your application for registration, to decide whether to revoke your registration or to place limitations on your activities as an investment adviser, and to identify potential problem areas to focus on during our on-site examinations. One event may result in "yes" answers to more than one of the questions below.

Your *advisory affiliates* are: (1) all of your current *employees* (other than *employees* performing only clerical, administrative, support or similar functions); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you. If you are a "separately identifiable department or division" (SID) of a bank, see the Glossary of Terms to determine who your *advisory affiliates* are.

If you are registered or registering with the SEC, you may limit your disclosure of any event listed in Item 11 to ten years following the date of the event. If you are registered or registering with a state, you must respond to the questions as posed; you may, therefore, limit your disclosure to ten years following the date of an event only in responding to Items 11.A(1), 11.A(2), 11.B(1), 11.B(2), 11.D(4), and 11.H(1)(a). For purposes of calculating this ten-year period, the date of an event is the date the final order, judgment, or decree was entered, or the date any rights of appeal from preliminary orders, judgments, or decrees lapsed.

You must complete the appropriate Disclosure Reporting Page ("DRP") for "yes" answers to the questions in this Item 11.

For "yes" answers to the following questions, complete a Criminal Action DRP:

- | | |
|--|--|
| A. In the past ten years, have you or any <i>advisory affiliate</i> : | YES NO |
| (1) been convicted of or plead guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any <i>felony</i> ? | <input type="radio"/> <input checked="" type="radio"/> |
| (2) been <i>charged</i> with any <i>felony</i> ? | <input type="radio"/> <input checked="" type="radio"/> |

If you are registered or registering with the SEC, you may limit your response to Item 11.A(2) to charges that are currently pending.

- | | |
|--|--|
| B. In the past ten years, have you or any <i>advisory affiliate</i> : | |
| (1) been convicted of or plead guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a <i>misdemeanor</i> involving: investments or an <i>investment-related</i> business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses? | <input type="radio"/> <input checked="" type="radio"/> |
| (2) been <i>charged</i> with a <i>misdemeanor</i> listed in 11.B(1)? | <input type="radio"/> <input checked="" type="radio"/> |

If you are registered or registering with the SEC, you may limit your response to Item 11.B(2) to charges that are currently pending.

For "yes" answers to the following questions, complete a Regulatory Action DRP:

- | | |
|---|--|
| C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever: | YES NO |
| (1) <i>found</i> you or any <i>advisory affiliate</i> to have made a false statement or omission? | <input type="radio"/> <input checked="" type="radio"/> |
| (2) <i>found</i> you or any <i>advisory affiliate</i> to have been <i>involved</i> in a violation of SEC or CFTC regulations or statutes? | <input type="radio"/> <input checked="" type="radio"/> |
| (3) <i>found</i> you or any <i>advisory affiliate</i> to have been a cause of an <i>investment-related</i> | <input type="radio"/> <input checked="" type="radio"/> |

business having its authorization to do business denied, suspended, revoked, or restricted?

- (4) entered an *order* against you or any *advisory affiliate* in connection with *investment-related* activity? ☐ ☒
- (5) imposed a civil money penalty on you or any *advisory affiliate*, or *ordered* you or any *advisory affiliate* to cease and desist from any activity? ☐ ☒

D. Has any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority*:

- (1) ever *found* you or any *advisory affiliate* to have made a false statement or omission, or been dishonest, unfair, or unethical? ☐ ☒
- (2) ever *found* you or any *advisory affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes? ☐ ☒
- (3) ever *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted? ☐ ☒
- (4) in the past ten years, entered an *order* against you or any *advisory affiliate* in connection with an *investment-related* activity? ☐ ☒
- (5) ever denied, suspended, or revoked your or any *advisory affiliate's* registration or license, or otherwise prevented you or any *advisory affiliate*, by *order*, from associating with an *investment-related* business or restricted your or any *advisory affiliate's* activity? ☐ ☒

E. Has any *self-regulatory organization* or commodities exchange ever:

- (1) *found* you or any *advisory affiliate* to have made a false statement or omission? ☐ ☒
- (2) *found* you or any *advisory affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the SEC)? ☒ ☐
- (3) *found* you or any *advisory affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted? ☐ ☒
- (4) disciplined you or any *advisory affiliate* by expelling or suspending you or the *advisory affiliate* from membership, barring or suspending you or the *advisory affiliate* from association with other members, or otherwise restricting your or the *advisory affiliate's* activities? ☐ ☒

F. Has an authorization to act as an attorney, accountant, or federal contractor granted to you or any *advisory affiliate* ever been revoked or suspended? ☐ ☒

G. Are you or any *advisory affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of Item 11.C., 11.D., or 11.E.? ☐ ☒

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

- | H. (1) Has any domestic or foreign court: | YES | NO |
|--|-----------------------|----------------------------------|
| (a) in the past ten years, <i>enjoined</i> you or any <i>advisory affiliate</i> in connection with any <i>investment-related</i> activity? | <input type="radio"/> | <input checked="" type="radio"/> |
| (b) ever <i>found</i> that you or any <i>advisory affiliate</i> were <i>involved</i> in a violation of <i>investment-related</i> statutes or regulations? | <input type="radio"/> | <input checked="" type="radio"/> |
| (c) ever dismissed, pursuant to a settlement agreement, an <i>investment-related</i> civil action brought against you or any <i>advisory affiliate</i> by a state or <i>foreign financial regulatory authority</i> ? | <input type="radio"/> | <input checked="" type="radio"/> |

(2) Are you or any *advisory affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of Item 11.H(1)? ☐ ☒

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**

IARD/CRD Number:
2625

Rev. 02/2005

Item 12 Small Business

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7.

Answer this Item 12 only if you are registered or registering with the SEC and you indicated in response to Item 5.F(2)(c) that you have assets under management of less than \$25 million. You are not required to answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of *clients*. In determining your or another *person's* total assets, you may use the total assets shown on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).
- Control means the power to direct or cause the direction of the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another *person* is presumed to control the other *person*.

YES NO

A. Did you have total assets of \$5 million or more on the last day of your most recent fiscal year? ☐ ☐

If "yes," you do not need to answer Items 12.B. and 12.C.

B. Do you:

(1) *control* another investment adviser that had assets under management of \$25 million or more on the last day of its most recent fiscal year? ☐ ☐

(2) *control* another *person* (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year? ☐ ☐

C. Are you:

(1) *controlled* by or under common *control* with another investment adviser that had assets under management of \$25 million or more on the last day of its most recent fiscal year? ☐ ☐

(2) *controlled* by or under common *control* with another *person* (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year? ☐ ☐

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES LLC	IARD/CRD Number: 2625
Rev. 02/2005	

Part 2 Brochures

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATIONPrimary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**IARD/CRD Number:
2625

Rev. 02/2005

Form ADV, Schedule A**Direct Owners and Executive Officers**

1. Complete Schedule A only if you are submitting an initial application. Schedule A asks for information about your direct owners and executive officers. Use Schedule C to amend this information.
2. Direct Owners and Executive Officers. List below the names of:
 - (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer (Chief Compliance Officer is required and cannot be more than one individual), director, and any other individuals with similar status or functions;
 - (b) if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);

Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

- (c) if you are organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;
 - (d) in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and
 - (e) if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.
3. Do you have any indirect owners to be reported on Schedule B? ☐ Yes ☒ No
 4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner or executive officer is an individual.
 5. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are:

NA - less than 5%	B - 10% but less than 25%	D - 50% but less than 75%
A - 5% but less than	C - 25% but less than	E - 75% or more

10% 50%

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
- (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
- (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired MM/YYYY	Ownership Code	Control Person	PR	CRD No. If None: S.S. No. and Date of Birth, IRS Tax No., or Employer ID No.
MADOFF, BERNARD LAWRENCE	I	SOLE MEMBER/PRINCIPAL	01/2001	E	Y	N	316687
MADOFF, PETER BARNETT	I	DIRECTOR OF TRADING/CHIEF COMPLIANCE OFFICER	06/1969	NA	Y	N	316688

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES LLC	IARD/CRD Number: 2625
Rev. 02/2005	

Form ADV, Schedule B

Indirect Owners

- Complete Schedule B only if you are submitting an initial application. Schedule B asks for information about your indirect owners; you must first complete Schedule A, which asks for information about your direct owners. Use Schedule C to amend this information.
- Indirect Owners. With respect to each owner listed on Schedule A (except individual owners), list below:
 - in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

 - in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;
 - in the case of an owner that is a trust, the trust and each trustee; and
 - in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's

capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.
4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.
5. Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).
6. Ownership codes C - 25% but less than E - 75% or more
are: 50%
 D - 50% but less than F - Other (general partner, trustee, or elected
 75% manager)
7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
(b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
(c) Complete each column.

No Indirect Owner Information Filed

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**

IARD/CRD Number:
2625

Rev. 02/2005

Form ADV, Schedule D

Section 1.B. Other Business Names

List your other business names and the jurisdictions in which you use them. You must complete a separate Schedule D for each business name.

No Information Filed

Section 1.F. Other Offices

Complete the following information for each office, other than your *principal office and place of business*, at which you conduct investment advisory business. You must complete a separate Schedule D Page 1 for each location. If you are applying for registration, or are registered, only with the SEC, list only the largest five (in terms of numbers of *employees*).

No Information Filed

Section 1.I. World Wide Web Site Addresses

List your World Wide Web site addresses. You must complete a separate Schedule D for each World Wide Web site address.

World Wide Web Site Address: **WWW.MADOFF.COM**

Section 1.K. Locations of Books and Records

Complete the following information for each location at which you keep your books and records, other than your *principal office and place of business*. You must complete a separate Schedule D Page 1 for each location.

No Information Filed

Section 1.L. Registration with *Foreign Financial Regulatory Authorities*

List the name, in English, of each *foreign financial regulatory authority* and country with which you are registered. You must complete a separate Schedule D Page 2 for each *foreign financial regulatory authority* with whom you are registered.

No Information Filed

Section 2.A(7) Affiliated Adviser

No Information Filed

Section 2.A(8) Newly Formed Adviser

If you are relying on rule 203A-2(d), the newly formed adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations. You must make both of these representations:

- ☐ I am not registered or required to be registered with the SEC or a *state securities authority* and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.
- ☐ I undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

Section 2.A(9) Multi-State Adviser

If you are relying on rule 203A-2(e), the multi-state adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations.

If you are applying for registration as an investment adviser with the SEC, you must make both of these representations:

- ☐ I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 30 or more states to register as an investment adviser with the securities authorities in those states.
- ☐ I undertake to withdraw from SEC registration if I file an amendment to this registration indicating that I would be required by the laws of fewer than 25 states to register as an investment adviser with the securities authorities of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

- ☐ Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of at least 25 states to register as an investment adviser with the securities authorities in those states.

Section 2.A(11) SEC Exemptive Order

No Information Filed

Section 4 Successions

Complete the following information if you are succeeding to the business of a currently-registered investment adviser. If you acquired more than one firm in the succession you are reporting on this Form ADV, you must complete a separate Schedule D Page 3 for each acquired firm. See Part 1A Instruction 4.

No Information Filed

Section 5.I (2) *Wrap Fee Programs*

If you are a portfolio manager for one or more *wrap fee programs*, list the name of each program and its *sponsor*. You must complete a separate Schedule D Page 3 for each *wrap fee program* for which you are a portfolio manager.

No Information Filed

Section 6.B. Description of Primary Business

No Information Filed

Section 7.A. Affiliated Investment Advisers and Broker-Dealers

You MUST complete the following information for each investment adviser with whom you are affiliated. You MAY complete the following information for each broker-dealer with whom you are affiliated. You must complete a separate Schedule D Page 3 for each listed affiliate.

No Information Filed

Section 7.B. Limited Partnership Participation or Other Private Fund Participation

You must complete a separate Schedule D Page 4 for each limited partnership in which you or a *related person* is a general partner, each limited liability company for which you or a *related person* is a manager, and each other private fund that you advise.

No Information Filed

Section 10 *Control Persons*

You must complete a separate Schedule D Page 4 for each *control person* not named in Item 1.A. or Schedules A, B, or C that directly or indirectly *controls* your management or policies.

No Information Filed

Schedule D - Miscellaneous

You may use the space below to explain a response to an Item or to provide any other information.

No Information Filed

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**

IARD/CRD Number:
2625

Rev. 02/2005

Form ADV, DRPs

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☒ INITIAL **OR** ☐ AMENDED response used to report details for affirmative responses to Items 11.C., 11.D., 11.E., 11.F. or 11.G. of Form ADV.

Check item(s) being responded to:

Regulatory Action			
<input type="checkbox"/> 11.C(1)	<input type="checkbox"/> 11.C(5)	<input type="checkbox"/> 11.D(4)	<input type="checkbox"/> 11.E(3)
<input type="checkbox"/> 11.C(2)	<input type="checkbox"/> 11.D(1)	<input type="checkbox"/> 11.D(5)	<input type="checkbox"/> 11.E(4)
<input type="checkbox"/> 11.C(3)	<input type="checkbox"/> 11.D(2)	<input type="checkbox"/> 11.E(1)	<input type="checkbox"/> 11.F
<input type="checkbox"/> 11.C(4)	<input type="checkbox"/> 11.D(3)	<input checked="" type="checkbox"/> 11.E(2)	<input type="checkbox"/> 11.G

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11.C., 11.D., 11.E., 11.F. or 11.G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details to each action on a separate DRP.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ☒ You (the advisory firm)
- ☐ You and one or more of your *advisory affiliates*
- ☐ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

ADV DRP - *ADVISORY AFFILIATE*

No Information Filed

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

☐ This DRP should be removed from the ADV record because: (1) the event or *proceeding* occurred more than ten years ago or (2) the adviser is registered or applying for registration with the SEC and the event was resolved in the adviser's or *advisory affiliate's* favor.

If you are registered or registering with a *state securities authority*, you may remove a DRP for an event you reported only in response to Item 11.D(4), and only if that event occurred more than ten years ago. If you are registered or registering with the SEC, you may remove a DRP for any event listed in Item 11 that occurred more than ten years ago.

B. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.

- ☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

PART II

1. Regulatory Action initiated by:

☐ SEC ☐ Other Federal ☐ State ☒ SRO ☐ Foreign

(Full name of regulator, foreign financial regulatory authority, federal, state, or SRO)

NASD

2. Principal Sanction:

Other Sanctions:

3. Date Initiated (MM/DD/YYYY):

07/06/2005 ☒ Exact ☐ Explanation

If not exact, provide explanation:

4. Docket/Case Number:

CLG050081

5. *Advisory Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type:

No Product

Other Product Types:

7. Describe the allegations related to this regulatory action (your response must fit within the space provided):

SEC RULE 11AC1-4 - THE FIRM FAILED TO DISPLAY IMMEDIATELY CUSTOMER LIMIT ORDERS IN NASDAQ SECURITIES IN ITS PUBLIC QUOTATION, WHEN EACH SUCH ORDER WAS AT A PRICE THAT WOULD HAVE IMPROVED THE FIRM'S BID OR OFFER IN EACH SUCH SECURITY; OR WHEN THE ORDER WAS PRICED EQUAL TO THE FIRM'S BID OR OFFER AND THE NATIONAL BEST BID OR OFFER FOR EACH SECURITY, AND THE SIZE OF THE ORDER REPRESENTED MORE THAN A DE MINIMUS CHANGE IN RELATION TO THE SIZE ASSOCIATED WITH THE FIRM'S BID OR OFFER IN EACH SECURITY

8. Current status ? ☐ Pending ☐ On Appeal ☒ Final

9. If on appeal, regulatory action appealed to (SEC, SRO, Federal or State Court) and Date Appeal Filed:

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved:

Acceptance, Waiver & Consent(AWC)

11. Resolution Date (MM/DD/YYYY):

07/06/2005 ☒ Exact ☐ Explanation

If not exact, provide explanation:

12. Resolution Detail:

A. Were any of the following Sanctions *Ordered* (check all appropriate items)?

- ☒ Monetary/Fine Amount: \$ 7000
- ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution
- ☒ Censure ☐ Cease and Desist/Injunction
- ☐ Bar ☐ Suspension

B. Other Sanctions *Ordered*:

Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:

WITHOUT ADMITTING OR DENYING THE ALLEGATIONS, THE FIRM CONSENTED TO THE DESCRIBED SANCTIONS AND TO THE ENTRY OF FINDINGS, THEREFORE THE FIRM IS CENSURED AND FINED \$7,000.00.

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates (your response must fit within the space provided.)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☒ INITIAL **OR** ☐ AMENDED response used to report details for affirmative responses to Items 11.C., 11.D., 11.E., 11.F. or 11.G. of Form ADV.

Check item(s) being responded to:

Regulatory Action			
<input type="checkbox"/> 11.C(1)	<input type="checkbox"/> 11.C(5)	<input type="checkbox"/> 11.D(4)	<input type="checkbox"/> 11.E(3)
<input type="checkbox"/> 11.C(2)	<input type="checkbox"/> 11.D(1)	<input type="checkbox"/> 11.D(5)	<input type="checkbox"/> 11.E(4)
<input type="checkbox"/> 11.C(3)	<input type="checkbox"/> 11.D(2)	<input type="checkbox"/> 11.E(1)	<input type="checkbox"/> 11.F
<input type="checkbox"/> 11.C(4)	<input type="checkbox"/> 11.D(3)	<input checked="" type="checkbox"/> 11.E(2)	<input type="checkbox"/> 11.G

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11.C., 11.D., 11.E., 11.F. or 11.G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details to each action on a separate DRP.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):



You (the advisory firm)



You and one or more of your *advisory affiliates*



One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

ADV DRP - ADVISORY AFFILIATE

No Information Filed



This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.



This DRP should be removed from the ADV record because: (1) the event or *proceeding* occurred more than ten years ago or (2) the adviser is registered or applying for registration with the SEC and the event was resolved in the adviser's or *advisory affiliate's* favor.

If you are registered or registering with a *state securities authority*, you may remove a DRP for an event you reported only in response to Item 11.D(4), and only if that event occurred more than ten years ago. If you are registered or registering with the SEC, you may remove a DRP for any event listed in Item 11 that occurred more than ten years ago.

B. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.



Yes



No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

PART II

1. Regulatory Action initiated by:



SEC



Other Federal



State



SRO



Foreign

(Full name of regulator, *foreign financial regulatory authority*, federal, state, or SRO)

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

2. Principal Sanction:

Civil and Administrative Penalt(ies) /Fine(s)

Other Sanctions:

CENSURE

3. Date Initiated (MM/DD/YYYY):

02/26/2007



Exact



Explanation

If not exact, provide explanation:

4. Docket/Case Number:

2005009132/20050010261

5. *Advisory Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type:

Equity - OTC

Other Product Types:

7. Describe the allegations related to this regulatory action (your response must fit within the space provided):

THE FIRM SUBMITTED AN AWC THAT WAS ACCEPTED BY THE NASD FOR VIOLATIONS OF
LIMIT ORDER DISPLAY AND LIMIT ORDER PROTECTION.

8. Current status ? ☐ Pending ☐ On Appeal ☒ Final

9. If on appeal, regulatory action appealed to (SEC, SRO, Federal or State Court) and Date Appeal Filed:

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved:

Acceptance, Waiver & Consent(AWC)

11. Resolution Date (MM/DD/YYYY):

02/27/2007 ☒ Exact ☐ Explanation

If not exact, provide explanation:

12. Resolution Detail:

A. Were any of the following Sanctions *Ordered* (check all appropriate items)?

☒ Monetary/Fine Amount: \$ 8500

☐ Revocation/Expulsion/Denial

☐ Disgorgement/Restitution

☒ Censure

☐ Cease and Desist/Injunction

☐ Bar

☐ Suspension

B. Other Sanctions *Ordered*:

Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:

WITHOUT ADMITTING OR DENYING THE ALLEGATIONS, THE FIRM CONSENTED TO THE DESCRIBED SANCTIONS AND TO THE ENTRY OF FINDINGS, THEREFORE THE FIRM WAS CENSURED AND FINED \$8,500.00.

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates (your response must fit within the space

provided.)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

FORM ADV

OMB: 3235-0049

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **BERNARD L. MADOFF INVESTMENT
SECURITIES LLC**

IARD/CRD Number:
2625

Rev. 02/2005

Form ADV, Signature Page

DOMESTIC INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business* and any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such *persons* may accept service on your behalf, of any notice, subpoena, summons, *order instituting proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are submitting a *notice filing*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature:
BERNARD L. MADOFF

Date: MM/DD/YYYY
01/07/2008

Printed Name:
BERNARD L. MADOFF

Title:
SOLE MEMBER

Adviser CRD Number:

2625

NON-RESIDENT INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State or other legally designated officer, of any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such *persons* may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding*, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of any state in which you are submitting a *notice filing*.

2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

3. Non-Resident Investment Adviser Undertaking Regarding Books and Records

By signing this Form ADV, you also agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the Commission, or at any one of its offices in the United States, as specified by the Commission, correct, current, and complete copies of any or all records that you are required to maintain under Rule 204-2 under the Investment Advisers Act of 1940. This undertaking shall be binding upon you, your heirs, successors and assigns, and any *person* subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature:

Date: MM/DD/YYYY

Printed Name:

Title:

Adviser CRD Number:

2625

State Registered Investment Adviser Execution Page

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for state registration and all amendments to registration.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the legally designated officers and their successors, of the state in which you maintain your *principal office and place of business* and any other state in which you are applying for registration or amending your registration, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order instituting proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding*, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are applying for registration or amending your registration.

2. State-Registered Investment Adviser Affidavit

If you are subject to state regulation, by signing this Form ADV, you represent that, you are in compliance with the registration requirements of the state in which you maintain your principal place of business and are in compliance with the bonding, capital, and recordkeeping requirements of that state.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature

Date MM/DD/YYYY

CRD Number

2625

Printed Name

Title

EXHIBIT 77
FILED UNDER SEAL

EXHIBIT 78

FILED UNDER SEAL

EXHIBIT 79

FILED UNDER SEAL

Exhibit 80

DECHERT LLP
1095 Avenue of the Americas
New York, New York 10036
Tel: (212) 698-3500
Fax: (212) 698-3599
Andrew J. Levander
andrew.levander@dechert.com
Gary J. Mennitt
gary.mennitt@dechert.com
Neil A. Steiner
neil.steiner@dechert.com

*Attorneys for Defendants J. Ezra Merkin
and Gabriel Capital Corporation*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
In re:	:	
	:	
BERNARD L. MADOFF INVESTMENT	:	SIPA LIQUIDATION
SECURITIES LLC,	:	
	:	No. 08-01789 (BRL)
Debtor.	:	
-----	X	
IRVING H. PICARD, Trustee for the Liquidation	:	
of Bernard L. Madoff Investment Securities LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Adv. Proc. No. 09-01182 (BRL)
	:	
J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,	:	
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,	:	
GABRIEL CAPITAL CORPORATION,	:	
	:	
Defendants.	:	
-----	X	

**DEFENDANTS J. EZRA MERKIN AND GABRIEL CAPITAL CORPORATION'S
SUPPLEMENTAL RESPONSES TO PLAINTIFF'S SECOND SET OF
INTERROGATORIES AND REQUESTS FOR ADMISSIONS
IN ACCORDANCE WITH DECISION #3**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (made applicable by Rules 7026 and 7033 of the Federal Rules of Bankruptcy Procedure), Rule 7033-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”), and Judge Cyganowski’s Decision #3, Defendants J. Ezra Merkin (“Merkin”) and Gabriel Capital Corporation (“GCC” and with Merkin, “Defendants”), by their attorneys, Dechert LLP, hereby supplement their responses to Interrogatories No. 1, 2, 3, 7, 8, 9, 10, 11, 13, 15 and 16 of Plaintiff’s Second Set of Interrogatories and Request No. 9 of Plaintiff’s Requests for Admissions. These supplemental responses incorporate by reference the General Objections and each of the Specific Objections set forth in Defendants’ Answers and Objections to Plaintiff’s Second Set of Interrogatories and Responses to Plaintiff’s Requests for Admissions, as if fully set forth herein, and are made without waiver of any such objections.

SUPPLEMENTAL ANSWER TO INTERROGATORY NOS. 1, 2, 3, 7, 8, 9, 10, 11 AND 13:

Subject to and without waiving their objections, and expressly preserving the right to supplement this Interrogatory Response, Defendants state as follows:

Prior to investing with Mr. Madoff, Mr. Merkin had conversations with a number of sophisticated investors who were clients of Mr. Madoff and had accounts with his firm, Bernard L. Madoff Investment Securities, LLC (“BLMIS”), concerning Mr. Madoff’s reputation, trading strategy and risks. Those investors included Leon Meyers (at the time the manager of the Scheuer family office), Sandra Manske (at the time a senior executive of the Tremont funds and later the founder of the Maxam funds), David Gottesman (the founder of First Manhattan Corporation and a director of Berkshire Hathaway), Gedale Horowitz (who at the time ran Salomon Brothers’ municipal bond department), and Daniel Hoffert (a successful Wall Street investor), all of whom spoke very highly of Mr. Madoff and his investment

strategies. Mr. Merkin also had conversations with customers of BLMIS's market-making operations. And Mr. Merkin discussed Mr. Madoff with his father, Hermann Merkin (a successful businessman and investor), who told his son that "I know Bernie, and he's okay," which Ezra Merkin understood to be high praise coming from his father.

In addition, prior to investing with Mr. Madoff, Mr. Merkin met with Mr. Madoff in Mr. Madoff's offices, and discussed Mr. Madoff's trading strategies as well as Mr. Madoff's market-making activities. Mr. Madoff also explained that BLMIS operated a significant wholesale business, in which its customers included Charles Schwab and Fidelity. They also discussed Mr. Madoff's and his brother's involvement in industry affairs. As Mr. Merkin understood, Mr. Madoff at that time had a sterling reputation; was heavily involved in industry affairs; and his firm was a very dominant market maker with an extraordinary share of the trading in certain NYSE stocks, particularly heavily traded, large cap stocks. Indeed, Mr. Madoff subsequently became the chairman of NASDAQ.

Mr. Merkin first invested with Mr. Madoff and BLMIS through Mr. Meyers and the Scheuer family's account with Mr. Madoff. After a period of time and gaining additional comfort with Mr. Madoff and his trading strategies, Mr. Merkin thereafter opened managed accounts with BLMIS on behalf of Gabriel Capital L.P., Ariel Fund Limited, Ascot Fund Limited (which was subsequently transferred to the account of Ascot Partners, L.P., in connection with a reorganization of the domestic and offshore Ascot funds), and Ascot Partners, L.P. (collectively, the "Funds"), and delegated trading authority over those accounts to Mr. Madoff.

As an additional part of his due diligence on and monitoring of Mr. Madoff and BLMIS, Mr. Merkin maintained a file that included newspaper articles and profiles of Mr.

Madoff, notes of certain of his meetings with Mr. Madoff, and information concerning other funds that had significant investments with Mr. Madoff and BLMIS. For example, Mr. Merkin reviewed and retained a 1989 article from *Forbes* describing how BLMIS made markets in 250 of the largest, most actively traded stocks and identifying some of its biggest customers, including A.G. Edwards, Charles Schwab, and Fidelity. Another *Forbes* article, from 1992, similarly described Mr. Madoff and his firm as one of the biggest of the new age traders on Wall Street who were competing with the New York Stock Exchange for trades, and an April 1993 *International Herald Tribune* likewise discussed how Mr. Madoff was gaining the upper hand in a competition with the New York and American Stock Exchanges. And a very significant *New York Times* article from 1992 discussed the United States Securities and Exchange Commission's ("SEC") investigation into unregistered notes being marketed by Avellino & Bienes, a Florida accounting firm, and reported on the SEC's relief that all of the money that had been raised from the sale of the notes -- \$440 million -- had been deposited in an account with BLMIS and managed by Mr. Madoff, and was able to be liquidated and returned to the note purchasers almost immediately.

Moreover, Mr. Madoff was widely credited with breaking the New York Stock Exchange's hegemony over Wall Street trading. Thus, by 1999 -- as reflected in *New York Times* and *Wall Street Journal* articles that Mr. Merkin read and retained in his file -- BLMIS entered into a joint venture with Goldman Sachs, Morgan Stanley, Salomon Smith Barney, and Merrill Lynch to establish the first electronic trading platform for NYSE stocks. That those four well-established Wall Street firms were willing to enter into a joint venture with BLMIS further enhanced Mr. Madoff's reputation and provided additional comfort to Mr. Merkin. Moreover, as Mr. Merkin knew, Mr. Madoff frequently met with industry leaders at

the SEC and regularly testified in Congress about developments in the securities industry and the ongoing transformation of the U.S. financial markets.

As an additional part of his due diligence and monitoring of the Funds' investments, Mr. Merkin met with Mr. Madoff ten to fifteen times a year by phone or in person to discuss trading strategies. These conversations ranged from general discussions of Mr. Madoff's trading strategies, to potential changes in or refinements of the trading strategies, to discussions about the market, then-current market trends, and other market participants. From time to time, Mr. Merkin arranged and participated in meetings between Mr. Madoff and certain investors in the Funds, including Gedale Horowitz, Ludwig Bravmann, Alec Hackel, Christof Reichmuth, Patrick Erne, Michael Matlin, and Roman Igilnikov and others from Union Bancaire Privee. Mr. Merkin also discussed Mr. Madoff and his investment strategy with many other customers of Mr. Madoff and BLMIS, including Ludwig Jesselson, David Gottesman, and Leon Meyers, as well as with other sophisticated investors including people who served on the Yeshiva University Investment Committee. Mr. Merkin also discussed Mr. Madoff, his trading strategy and BLMIS with representatives of BNP Paribas as part of their due diligence in connection with a proposal to create a levered version of Ascot.

Mr. Merkin also knew that BLMIS was a registered broker-dealer and later registered as an investment advisor, and therefore was subject to periodic and surprise inspections by its primary regulator, the SEC. The fact that Mr. Madoff and his firm were regularly inspected by the SEC and the SEC had never raised any significant issue about the firm's operations -- in one of their many conversations, Mr. Madoff reported that the SEC had visited BLMIS's offices to conduct reviews eight times in sixteen years -- gave Mr. Merkin additional comfort about Mr. Madoff's bona fides.

As a further part of the due diligence on and monitoring of the Funds' investments, Mr. Merkin had complete transparency to what he -- and many others -- understood was the trading being conducted by Mr. Madoff in the Funds' accounts. BLMIS sent confirmations of every trade supposedly made in the accounts, which were reviewed by GCC employees and input into GCC's portfolio management system ("PMS"). GCC employees then reconciled GCC's accounting records against to the monthly statements received from BLMIS. The PMS system enabled GCC employees to generate daily reports showing any transactions as well as profit and loss information for the portfolio, which Mr. Merkin would review on a daily basis. Mr. Merkin also regularly checked the portfolio to ensure that there were a sufficient number of put options to cover the value of the equities owned when the account was invested in the market.

Another important part of Defendants' due diligence and monitoring of the Funds' investments was the annual audit of the Funds' financial statements conducted by BDO Seidman LLP ("BDO"). BDO was given unfettered access to GCC's employees and records to conduct its audits of the financial statements in accordance with generally accepted auditing standards. As part of its audit, BDO reviewed and tested various trade confirmations and monthly statements, and communicated directly with BLMIS concerning the value of the Funds' investments. In addition, BDO requested and received copies of audited financial statements and statements of internal controls certified by BLMIS's auditor, and never raised any issue about either the contents of those statements or the identity or qualifications of BLMIS's auditor (Mr. Madoff had explained to Mr. Merkin that he used a small accounting firm because they understood his business and provided superior customer service and partner-level attention compared to a larger firm).

Perhaps most significantly, Mr. Merkin had a nearly two-decade track record of receiving timely withdrawals on demand from the Funds' BLMIS accounts, and was aware that other clients of Mr. Madoff had a similar experience. The ability timely to withdraw capital from the BLMIS accounts provided additional comfort as part of Mr. Merkin's due diligence and monitoring of the Funds' investments.

SUPPLEMENTAL ANSWER TO INTERROGATORY NOS. 15 AND 16:

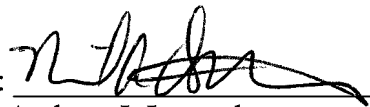
Subject to and without waiving their objections, Defendants state that information responsive to this request can be found in documents produced to Plaintiff, including Defendants' tax returns for the years 2000 to 2008, as part of Defendants' May 22, 2013 production. These tax returns can be located in documents bearing Bates numbers GCC-P 0602380-0605295 and GCC-P 0628856-0636284.

SUPPLEMENTAL RESPONSE TO REQUESTS FOR ADMISSION NO. 9:

Denied.

Dated: New York, New York
August 30, 2013

DECHERT LLP

By: 
Andrew J. Levander
Gary J. Mennitt
Neil A. Steiner
1095 Avenue of the Americas
New York, New York 10036
(212) 698-3500
andrew.levander@dechert.com
gary.mennitt@dechert.com
neil.steiner@dechert.com

*Attorneys for Defendants J. Ezra Merkin
and Gabriel Capital Corporation*

Exhibit 81

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3

4 - - - - - x

5 SECURITIES INVESTOR

6 PROTECTION CORPORATION, Case No. 08-1789

7 Debtor.

8 - - - - - x

9 PICARD,

10 Plaintiff,

11 v. Adv. Case No. 09-01182(SMB)

12 MERKIN, ET AL.,

13 Defendants.

14 - - - - - x

15 IRVING H. PICARD, TRUSTEE

16 FOR THE LIQUIDATION OF

17 BERNARD L. MADOFF

18 INVESTMENT SECURITIES LLC,

19 Plaintiff,

20 v. Adv. Case No. 09-01305(SMB)

21 COHMAD SECURITIES

22 CORPORATION,

23 Defendant.

24 - - - - - x

25

U.S. Bankruptcy Court

One Bowling Green

New York, New York

August 18, 2015

10:04 AM

B E F O R E :

HON STUART M. BERNSTEIN

U.S. BANKRUPTCY JUDGE

Hearing re: Adv. Case 09-01182 - Status Conference

Hearing re: Adv. Case 09-01305 - Motion to Quash A Subpoena
upon non-party Citibank, N.A. and upon non-party JP Morgan
Chase, N.A.

Transcribed by: Dawn South

1 A P P E A R A N C E S :

2 BAKER HOSTETLER

3 Attorneys for the Trustee

4 45 Rockefeller Plaza

5 New York, NY 10111

6

7 BY: DAVID J. SHEEHAN, ESQ.

8 LAN HOANG, ESQ.

9 BRIAN W. SONG, ESQ.

10

11 DECHERT LLP

12 Attorney for Defendants

13 1095 Avenue of the Americas

14 New York, NY 10036-6797

15

16 BY: NEIL A. STEINER, ESQ.

17

18 NORTON ROSS FULBRIGHT US LLP

19 Attorneys for Ascot Receiver and Ascot Fund

20 666 Fifth Avenue

21 New York, NY 10103-3198

22

23

24 BY: JAMI MILLS VIBBERT, ESQ.

25 JUDITH A. ARCHER, ESQ.

1 BAKER HOSTETLER

2 Attorneys for Trustee

3 45 Rockefeller Plaza

4 New York, NY 10111

5

6 BY: KARIN SCHOLZ JENSON, ESQ.

7 KATHRYN M. ZUNNO, ESQ.

8 ESTERINA GIULIANI, ESQ.

9

10 FOX ROTHSCHILD LLP

11 Attorney for Defendant Jonathan Greenberg

12 100 Park Avenue

13 Suite 1500

14 New York, NY 10017

15

16 BY: ERNEST E. BADWAY, ESQ.

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 THE COURT: Madoff?

3 MR. SHEEHAN: There's a few, Your Honor, you
4 wanted to do --

5 THE COURT: Well, I only have two on the calendar.
6 I only have two matters on the calendar. The motion to
7 quash and the -- I guess the case conference in Merkin.

8 MR. SHEEHAN: Right. Which one do you want to do
9 first?

10 THE COURT: I'll do Merkin first.

11 MR. SHEEHAN: Okay.

12 (Pause)

13 THE COURT: I got -- I received letters from
14 counsel for Ascot or the Ascot entities I guess, then the
15 Merkin defendants suggesting that the remainder of this
16 action can be disposed of on a motion for summary judgment.
17 Is that --

18 MR. STEINER: Correct, Your Honor.

19 THE COURT: Okay. Tell me why.

20 MR. STEINER: Well, Your Honor, as we laid out in
21 the letters there are two issues, Your Honor.

22 First the claims with respect to the Merkin
23 defendants are two grounds for summary judgment. The first
24 applies to Ascot Partners as well, which is in order to any
25 claim against the Merkin defendants, the trustee must first

1 prevail on its claim against Ascot Partners, that's the
2 primary --

3 THE COURT: Let me just ask a question. Has the
4 trustee recovered the full amount of the two-year transfers
5 from Gabriel and Ariel (ph)?

6 MR. SHEEHAN: Yes, Your Honor.

7 THE COURT: All right. So there could be no
8 subsequent transferee for those claims.

9 MR. SHEEHAN: That's correct, Your Honor.

10 THE COURT: Okay. That wasn't stated in your
11 letter, but --

12 MR. STEINER: We apologize, Your Honor.

13 THE COURT: -- I figured it out.

14 MR. STEINER: So the only claims that remain are
15 the claims for two-year transfers against Ascot Partners,
16 and then the effort to recover -- to the extent any of those
17 claims were successful, to recover those from the Merkin
18 defendants either as subsequent transferees for a small
19 portion or on the grounds that Mr. Merkin is the general
20 partner of Ascot Partners.

21 And as against Ascot Partners we believe there's
22 no triable issue of fact, because notwithstanding all the
23 allegations of the complaint when the Court considers what
24 evidence has been deduced through discovery or adduced
25 through discovery in this case, we don't believe that

1 there's any material factual issue left would warrant a
2 trial. Even --

3 THE COURT: Well the issue turns really I guess on
4 the factual issue on Merkin's willful blindness.

5 MR. STEINER: That's correct.

6 THE COURT: So tell me why there's no factual
7 issue regarding that.

8 MR. STEINER: Because, Your Honor, we believe that
9 notwithstanding the inflammatory allegations, all there are
10 here are the generic so-called red flags that apply to every
11 investor in -- that had an account with BLMIS, which
12 includes many other sophisticated investors, many other
13 funds, and we don't believe that those facts, nor the
14 supposed expert testimony about those facts, when you
15 consider what the expert then actually admitted in his
16 deposition and what these factors are, leaves any issue to
17 be tried.

18 And so we believe that, Your Honor, when you have
19 the statements of material and undisputed facts, have the
20 briefs, we'll be able to dispose of that issue on summary
21 judgment.

22 THE COURT: Mr. Sheehan, what are the factual
23 issues regarding Merkin's willful blindness?

24 MR. SHEEHAN: Well starting first with Mr. Merkin
25 himself, he asserts that he did proper due diligence. We

1 challenged that, we think he did virtually no due diligence
2 other than accepting the word of Mr. Madoff that everything
3 was fine --

4 THE COURT: Well --

5 MR. SHEEHAN: -- and never doing any due diligence
6 on that.

7 THE COURT: -- but the letter said that he
8 accompanied Ascot investors on meetings with -- to Madoff --

9 MR. SHEEHAN: That's not true.

10 THE COURT: -- and attracted the investors.

11 MR. SHEEHAN: But as far as I know when people
12 wanted to meet Mr. Merkin they didn't meet Mr. Merkin.

13 THE COURT: You mean Madoff?

14 MR. SHEEHAN: Now, I've made my peace with Bernie,
15 says Mr. Merkin about, I've made my peace with Bernie, I
16 don't ask questions, I just accept the results.

17 So in other words, Your Honor, for everything that
18 Mr. -- I disagree with everything he says in the letter, so
19 I didn't bother writing you one, and Your Honor is
20 intimately familiar with the willful blindness aspects of
21 the case from your decision last year.

22 So at the same time it didn't seem to us to make
23 any sense that if you go through it point by point, and if
24 Your Honor wants to go through that we're not adamantly
25 opposed to this, we're very comfortable that no motion to

1 dispose of this will ever be granted.

2 THE COURT: A motion for summary judgment is a lot
3 of work for everybody.

4 MR. SHEEHAN: I understand that.

5 THE COURT: And if it turns out that will are
6 simple questions of fact about Merkin's knowledge of willful
7 blindness it'd have to be disposed of at trial then there's
8 no point going through the exercise, I'll schedule a trial
9 in the matter, if it's ready to be tried.

10 MR. STEINER: Well, Your Honor, it is -- we are
11 ready to be tried. We believe that it can be disposed of on
12 summary judgment. We don't think that the summary judgment
13 briefing should delay a trial date. We're here to ask both
14 for a schedule to brief summary judgment, which we think
15 will be over the next several months, and -- for a trial,
16 and we would propose a trial next spring, you know, in the
17 March time frame, depending on Your Honor's schedule, but
18 we're here both to request a briefing schedule for summary
19 judgment and to request a trial date.

20 THE COURT: I can't tell you not to make a motion
21 for summary judgment, it just sounds like it may be a waste
22 of time.

23 MR. STEINER: Understood, but we believe there's
24 merit to it and we'd like the opportunity.

25 THE COURT: You raised a couple of points though

1 in your letter, which I don't agree with.

2 You seem to suggest that the trustee can't collect
3 from the subsequent transferees unless the initial
4 transferees are unable to pay, and I don't believe that's
5 the bar.

6 MR. STEINER: Well, I believe here any judgment
7 would be satisfied immediately, because Ascot would have not
8 just its net equity claim, but to the extent there was any
9 recovery by the trustee, it would have a 502(h) claim.

10 THE COURT: First of all, while the trustee can
11 make settlements, which he credits customers for the net
12 equity claim, your claim is disallowed until in this case
13 Ascot repays the money.

14 So if the trustee wants to stand on his rights
15 Ascot had got to come up with the \$280 million, or whatever
16 the number is, and pay the trustee, and then the trustee
17 would allow the net equity claim.

18 MR. STEINER: But as a practical matter, Your
19 Honor, while we believe that Your Honor and other judges in
20 this court routinely have just the net payment when you net
21 out everything --

22 THE COURT: But those are -- Mr. Steiner, those
23 are often parts of the settlements that the trustee has
24 agreed to, but the law is pretty clear that you don't get a
25 set off under 502(d), which is essentially what you're

1 arguing.

2 MR. STEINER: And, Your Honor, I don't believe
3 that that's the case. I believe when the body of cases were
4 tried the ultimate judgments in the Bayou case were net
5 judgments considering both the amount recovered and the
6 502(h) claims.

7 But regardless of that whether it's done on a net
8 payment basis or whether it's done as a payment one way if
9 there's any recovery even after summary judgment briefs and
10 a trial, but a net payment one way and then a credit back
11 and payment the other way, given what the numbers are, as a
12 practical matter it's difficult to conceive that Ascot
13 wouldn't be able to make that payment to get a much larger
14 claim back in its favor.

15 And so the practical reality of anything to
16 collect from either Ascot Fund or the Merkin defendants we
17 believe can be pretty readily disposed of.

18 MR. SHEEHAN: Your Honor --

19 THE COURT: I guess saying that as a practical
20 matter even if you recover the money you're going to have to
21 give them a credit for their claim.

22 MR. SHEEHAN: But the point is that the
23 misunderstanding of the law, to be blunt, by my adversary is
24 (indiscernible) at settlement, so just leave it at that.

25 The bottom line is, is that at the end of the day

1 unless he wins he gets nothing, all right? Nothing. And,
2 yeah, manufacture out of thin air to suggest that what he is
3 saying is the law would mean that we'd never have any money
4 to distribute, because we'd be constantly paying back
5 everybody's money that supposedly they were entitled to get
6 when in fact that's what 502(d) is all about.

7 They will end up at the end of this day with
8 nothing. And they don't quite understand that. And I've
9 tried to explain it, but Your Honor has as well.

10 Your Honor, with regard to the scheduling, we
11 have, you know, no objection to the scheduling that was
12 outlined just by, you know, by my adversary, no problem with
13 that whatsoever. If Your Honor wants to schedule it so that
14 it ends up with a March trial date that's fine with me too.

15 THE COURT: Well, I guess you two can discuss the
16 schedule --

17 MR. SHEEHAN: Sure.

18 THE COURT: -- for the motion for summary
19 judgment. If you want otherwise I'll figure the schedule if
20 you can't.

21 MR. SHEEHAN: Okay, we'll talk among ourselves.
22 On that stuff we're pretty good.

23 THE COURT: Let me just reemphasize that
24 Mr. Sheehan is right, that unless you've settled you're not
25 going to get the credit you think you're going to get until

1 you repay all of the money that the trustee recovers.

2 MR. STEINER: Right. Well, Your Honor, what
3 Mr. Sheehan --

4 THE COURT: I have one other point to make. There
5 have been no trials, so don't suggest that at the end of the
6 day the recoveries are netted out against the net equity
7 claim, that's all going to be subject to settlements, and
8 that's the way the trustee settles the cases.

9 MR. STEINER: I understand that, Your Honor, but
10 what I believe Mr. Sheehan has recognized is that his
11 maximum claim here is a \$280 million claim on two-year
12 recoveries, and that if he prevails on that claim upon
13 payment of that amount, whether it's by Ascot Partners,
14 whether it's by someone on behalf of Ascot Partners, there
15 will then be an allowed claim for the net equity, which is
16 approximately \$235 million, plus the \$280 million under
17 502(h).

18 THE COURT: Well are you prepared to make the same
19 deal that all the other defendants have made and allow 100
20 percent to your claim and then they get what 88 percent of
21 the 502(h) claim?

22 MR. STEINER: We're not, Your Honor --

23 THE COURT: All right.

24 MR. STEINER: -- because we believe our facts are
25 better, and that we're here, we can try this case if we need

1 to, and I don't think Your Honor wants to get into what the
2 settlement discussions have been, but I believe --

3 THE COURT: No, I don't.

4 MR. STEINER: -- I believe what Mr. Sheehan has
5 represented is not an accurate statement of a breakdown in
6 settlement communications.

7 THE COURT: Yeah, he's right though, if you go to
8 trial and you lose you have to come up with \$280 million
9 before you have a net equity claim. That's basically it.

10 MR. STEINER: And we're correct that once we do
11 that you would have both the net equity claim plus the
12 502(h) claim.

13 MR. SHEEHAN: I just want to add one thing, Your
14 Honor. I've informed my adversary, with all due respect to
15 Your Honor's opinion on actual intent in this case, we
16 intend to appeal that.

17 THE COURT: Okay.

18 MR. SHEEHAN: We think that standard is
19 inappropriate from Judge Rakoff, your application of it is
20 your application. When we did the 54(b) you asked the right
21 question, am I deal with you or am I dealing with Judge
22 Rakoff? And I'm really trying to deal with Judge Rakoff.

23 THE COURT: I understand.

24 MR. SHEEHAN: Okay.

25 THE COURT: All right. Why don't you discuss the

1 schedule between yourselves, I'm not going to schedule a
2 trial date if he's making a motion for summary judgment.

3 MR. STEINER: Right.

4 THE COURT: And if you can't agree on something
5 just write me a letter and we'll have another conference and
6 I'll fix the schedule.

7 MR. STEINER: Sounds perfect, Your Honor. Thank
8 you.

9 THE COURT: All right. Thanks.

10 MR. STEINER: Okay.

11 MR. SHEEHAN: Thank you, Your Honor.

12 UNIDENTIFIED SPEAKER: Thank you.

13 (Pause)

14 THE COURT: All right. I'll hear the motion to
15 quash now.

16 MR. BADWAY: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. BADWAY: Ernest Badway, Fox Rothschild, for
19 the defendant Jonathan Greenberg.

20 MS. JENSON: Karin Jenson with Katie Zunno,
21 Esterina Giuliani for the trustee.

22 THE COURT: How do you do?

23 UNIDENTIFIED SPEAKER: Good morning.

24 THE COURT: Go ahead, Mr. Badway.

25 MR. BADWAY: Yes. Good morning, Your Honor.

1 Your Honor, our papers are fairly self-explanatory
2 and detailed, and the trustee's opposition has also detailed
3 their position, but I do want to highlight a couple of
4 points, Your Honor.

5 We have two subpoenas to third parties here. They
6 are the banks of my client. What the trustee is seeking is
7 16 years worth of bank records from my client.

8 THE COURT: Is your client being sued as a
9 subsequent transferee?

10 MR. BADWAY: No, Your Honor, my client is being
11 sued -- he was a Cohmad broker --

12 THE COURT: Right.

13 MR. BADWAY: -- and he's being sued for actually
14 receiving compensation from his employer.

15 THE COURT: Yeah, but I thought the allegation is
16 Cohmad got most of its money from BLMIS, so that the money
17 that Cohmad paid to your client presumably made him a
18 subsequent transferee. Is that the theory of the case?

19 MS. JENSON: That's correct.

20 THE COURT: Because these are transfer cases.

21 MR. BADWAY: That's right, Your Honor.

22 THE COURT: They're not aiding and abetting cases.

23 MR. BADWAY: Your Honor, I think that's accurate.

24 The only reason I was saying about that is because my
25 understanding from reading some of the allegations, given

1 the fact that my client has seeked a commission, which is
2 essentially the share with what Cohmad got and what --

3 THE COURT: Yeah, but it's still a transfer.

4 MR. BADWAY: Exactly, Your Honor.

5 THE COURT: And that why we're talking about
6 transfers and whether they were made in good faith or for
7 consideration or whatever.

8 MR. BADWAY: Correct, Your Honor, yes.

9 THE COURT: It's a different issue.

10 MR. BADWAY: Yeah, Your Honor. Yes, Your Honor,
11 Your Honor is absolutely correct, that's exactly where my
12 client stands in this particular case.

13 And, Your Honor, my client is now being subject to
14 these subpoenas where his confidential banking information
15 is supposed to be exposed to the public. The allegations
16 are that he received these as commissions. His salary, his
17 earnings from his employer.

18 THE COURT: Right.

19 MR. BADWAY: That's what he had and that's what he
20 used. He paid taxes on this money, Your Honor.

21 THE COURT: Everybody paid taxes on it.

22 MR. BADWAY: I understand Judge, under, but what
23 I'm saying is, Your Honor, what -- in terms of like with
24 some of these other subsequent transferees who may have sent
25 money down the road or down the pike this is an individual

1 who actually received his compensation from his employer.

2 THE COURT: But you're not arguing or you're not
3 -- you're not arguing that because it's compensation I
4 should dismiss the complaint, right?

5 MR. BADWAY: No.

6 THE COURT: I have transfers out there.

7 MR. BADWAY: Exactly, Your Honor.

8 THE COURT: And the trustee is trying to identify
9 the transfers.

10 MR. BADWAY: Well, Your Honor, it's a little more
11 than that. I think what the trustee is assuming is the
12 trustee is assuming that it has already obtained a judgment
13 and can go after where the money may have gone down the
14 road.

15 THE COURT: Yeah, the trustee has brought a
16 subsequent transfer claim, there's been no motion to dismiss
17 those claims, although I have dismissed some of these
18 claims, depending on the pleading. So, I have a living
19 subsequent transfer claim, and it may look like a sub pro
20 proceeding, but the trustee is entitled, I would think, to
21 follow the money to the subsequent transferees, who are
22 defendants in this action.

23 MR. BADWAY: Your Honor, I'm not sure why they're
24 entitled to look at the private financial bank records of my
25 client when they haven't actually demonstrated and proven

1 their claim that my client is in fact the subsequent
2 transferee.

3 THE COURT: Did your client receive money from
4 Cohmad?

5 MR. BADWAY: Yes, he did, Your Honor.

6 THE COURT: So what else do they have to prove?

7 MR. BADWAY: Well, Your Honor, they have to prove
8 that my client wasn't entitled to that money.

9 THE COURT: I don't think that's --

10 MR. BADWAY: Well, Judge, their complaint --

11 THE COURT: As I understand it their contention is
12 not only did he received the money, but he knew what was
13 going on, and that under those circumstances -- and I've
14 looked at the allegations --

15 MR. BADWAY: Yeah.

16 THE COURT: -- and I know that they're conclusory,
17 but there's also a context in which they're alleged. So --

18 MR. BADWAY: And you know it's -- Judge, it's
19 built upon a number of different sort of like, you know,
20 house of cards.

21 THE COURT: Okay. But you start with the
22 transfers and then there's issues of good faith and
23 consideration and who's got to plead them and who's got to
24 prove them and how far back it can go, but before you get to
25 any of that there's the issue of the transfers.

1 Have the parties -- have you attempted to
2 stipulate to all the transfers that your client received
3 during the six years preceding bankruptcy? Which is -- I
4 mean I don't know why you're looking for 1993, but for the
5 six years proceeding.

6 MR. BADWAY: Judge, I'd stipulate in open court
7 today, we'd stipulate to the monies that he received from
8 Cohmad. They have all of those records.

9 THE COURT: Do you have all of those records,
10 Ms. Jenson?

11 MR. BADWAY: They have all Cohmad records.

12 THE COURT: You know, you're asking for some guy's
13 private banking records.

14 MS. JENSON: Understood. We're just -- we are
15 seeking the discovery to make sure that we know the full
16 universe of transfers that defendant Greenberg received. We
17 do know that he received compensation from Cohmad, but we
18 also have information that some of the registered
19 representatives received transfers in other ways, and we
20 need to satisfy ourselves.

21 THE COURT: Well what other ways of transfers from
22 BLMIS or Cohmad?

23 MS. JENSON: Transfers directly from BLMIS. We
24 are still investigating the returns.

25 THE COURT: Well he an account -- I know he had

1 several accounts at BLMIS also didn't he?

2 MS. JENSON: Defendant Greenberg had one account
3 with BLMIS. Direct account, yes.

4 THE COURT: Well have you attempted to stipulate
5 to the transfers and then move onto these other issues,
6 whether it's consideration or commissions or anything like
7 that?

8 MR. BADWAY: If Your Honor is suggesting the
9 stipulation as to what he received from Cohmad, absolutely,
10 Judge, we'll stipulate to that. They don't need bank
11 records from my client for those.

12 THE COURT: Well, I'm just wondering unless
13 there's a wire transfer record how you're going to know
14 where money coming into the account came from?

15 MS. JENSON: Into the JP Morgan or Citibank
16 accounts?

17 THE COURT: Into Greenberg -- well,
18 Mr. Greenberg's account, wherever it was.

19 MS. JENSON: Right. And that's what we're seeking
20 to confirm here is that are there transfers that weren't
21 directly from Cohmad that are reflected in the Cohmad
22 records or from BLMIS directly that aren't reflected in the
23 BLMIS. And if he's willing to sit down with us and talk
24 about the scope of the transfers and how he received money
25 from BLMIS and from Cohmad then we're happy do that.

1 THE COURT: What about that suggestion? I think,
2 you know, you have this -- you're kind of coming into this
3 with this understanding or belief that you're not going to
4 have to turn over any records, and that's not the case.

5 While I am happy to listen to streamlining
6 discovery requests, for instance not going back to 1993, I
7 don't know why that's in there, but the only way that the
8 trustee can confirm what transfers there were is to look at
9 bank records. And I suppose the trustee could say, I just
10 want the records related to transfers from BLMIS and Cohmad,
11 but the bank is not going to be able to do -- figure that
12 out.

13 MR. BADWAY: But, Your Honor -- Your Honor, with
14 all candor to the Court I actually expected you not to give
15 me anything, so I just wanted you to be aware that's when I
16 came in.

17 But in terms of a stipulation, Your Honor, in
18 terms of that we'll go through the bank records ourselves
19 and we'll see --

20 THE COURT: I thought you didn't have bank
21 records?

22 MR. BADWAY: No, that's not what I said, Judge.

23 THE COURT: I thought I read in here that they had
24 represented that they only turned over some income returns
25 and they didn't have all the records.

1 MS. JENSON: That's correct. We have income
2 returns for certain of the years and we have one check that
3 was made out by one of the referred accounts to BLMIS.

4 THE COURT: So now you have a bank record?

5 MR. BADWAY: Judge, just -- no, no. First of all,
6 I never said that we didn't have a bank records, what I said
7 was they weren't entitled to subpoena JP Morgan and Citibank
8 for these particular records.

9 THE COURT: I think there was a response to a
10 document request back in 2010 or 2011 in which after all the
11 objections you said we don't have all the records. Isn't
12 that in there?

13 MS. JENSON: That's correct, Your Honor, it's at
14 page 4 of our opposition.

15 THE COURT: Yeah.

16 MR. BADWAY: Judge, in terms of person, but we'll
17 go to JP Morgan and Citibank and get the records. That's
18 different than saying that we have in our possession bank
19 records. That's what I'm saying. I'd go ahead -- my client
20 would go ahead --

21 THE COURT: Well --

22 MR. BADWAY: -- and actually ask for the records.

23 THE COURT: -- how does the trustee know that
24 you're turning over the records at this point? I guess if
25 you had the records then I guess you'd be in the same

1 situation though.

2 MR. BADWAY: Judge -- by the way, Judge, this is
3 another issue that trustee's counsel has just raised. Those
4 tax returns and that check were provided to them in
5 contemplation of settlement talks. They're not allowed to
6 use them in this particular --

7 THE COURT: That I don't know about.

8 MR. BADWAY: No, but I'm just saying --

9 THE COURT: That's not the issue before me.

10 MR. BADWAY: I know, but I just wanted to raise
11 that issue.

12 THE COURT: Well look, I think you ought to
13 discuss and it figure out a way that the trustee is either
14 going to get the information or get comfortable with
15 whatever you tell them about the information, but the bottom
16 line up is the trustee is entitled to inquire the transfers
17 within six years of the bankruptcy from Cohmad or BLMIS.

18 MS. JENSON: Your Honor, just one clarification --

19 THE COURT: And the alternative is simply to have
20 the trustee get it, hold it in confidence, figure out what's
21 in there that you need, dispose of the rest, and we can deal
22 with it that way too.

23 MS. JENSON: And just one point of clarification.

24 We are seeking to go back beyond six years --

25 THE COURT: Well --

1 MS. JENSON: -- based on the discovery rule and
2 surviving motions to dismiss on actual knowledge.

3 THE COURT: You're saying if he had actual
4 knowledge you can go back beyond six years?

5 MS. JENSON: We have --

6 THE COURT: Basically you seek the LR discovery
7 rule?

8 UNIDENTIFIED SPEAKER: Yeah. Correct, Your Honor.

9 THE COURT: I don't quite understand, I know it's
10 raised in another motion I heard, but I don't quite
11 understand how that discovery rule works.

12 MS. JENSON: The -- Judge Rakoff has already
13 addressed this and -- I'm sorry -- Judge Lifland when we had
14 the motion to dismiss --

15 THE COURT: Right.

16 MS. JENSON: -- back in 2011 I believe, that we've
17 adequately pled the discovery rule on the face of the
18 complaint.

19 THE COURT: Well maybe they are entitled to go
20 back to 1993. Judge Lifland has ruled on it.

21 MR. BADWAY: But, Judge, we don't have the same
22 interpretation of Judge Lifland's rule as they do, Judge.

23 THE COURT: Well this certainly doesn't come out
24 of the letters. Let me suggest that you talk about it. I
25 need more information about this case, and if Judge Lifland

1 issued a ruling that addresses this specific issue, and I
2 know it was raised in another motion, please bring it to my
3 attention, because I don't go back and read all the stuff I
4 have in my chambers every time. I'm sure you don't either.

5 What do you propose?

6 MR. BADWAY: Well, Judge, what I would propose is
7 to follow along with Your Honor and what Your Honor is
8 saying.

9 We will go back and we will request the records
10 from JP Morgan and Citi for the last six years, and if there
11 are --

12 THE COURT: I'm limiting it to six years based
13 upon what I've been told, and that's going to require some
14 further argument or information.

15 MR. BADWAY: Then probably best, Your Honor, to
16 just table it right now to adjourn the motion and then wait
17 to see what they come up with in terms of their argument
18 regarding --

19 THE COURT: Well why don't you give them -- make a
20 representation or stipulation regarding all the transfers
21 that were received.

22 MR. BADWAY: Sure.

23 THE COURT: And that's a place to start, because
24 you have that knowledge, they don't have that knowledge.
25 Maybe they have the transfers from BLMIS, but not

1 necessarily from Cohmad.

2 MR. BADWAY: Well, Judge, they do because they
3 have Cohmad's payroll records.

4 THE COURT: Those are just payroll records.

5 MR. BADWAY: That's all they received, Judge, and
6 they mentioned this BLMIS account, Judge --

7 THE COURT: Do you contend that he received
8 anything from Cohmad beyond the payroll records?

9 MS. JENSON: We don't have that information and
10 the investigation is ongoing.

11 MR. BADWAY: Judge, they could always ask them in
12 a deposition, Judge.

13 THE COURT: Well they don't -- look, they ask for
14 documents and that's the way you start. You get the
15 documents. And the more I'm hearing you the more I'm
16 convinced that maybe your motion lacks merit. So why don't
17 you do this.

18 MR. BADWAY: Sure, Judge.

19 THE COURT: I'll give you an opportunity to
20 discuss the matter. Is anybody going on vacation or
21 anything like that?

22 MS. JENSON: No.

23 THE COURT: Want to come back in a week? Is that
24 too soon? I know you'll say it's too soon, Mr. Badway.

25 MS. JENSON: I apologize. I'm not going on

1 vacation, but I am traveling for business all of next week.

2 I'm available on the 31st and the 1st.

3 THE COURT: How about September 1st? It's before
4 Labor Day.

5 MR. BADWAY: Your Honor, just so the record is
6 clear I am available next week.

7 THE COURT: Okay. I'm not looking to interfere
8 with anyone's vacation plans.

9 MR. BADWAY: September 1st is fine with me, Your
10 Honor.

11 THE COURT: All right. I'll adjourn this to
12 September 1st at 10 o'clock.

13 I would suggest that you work out the procedure by
14 which either the trustee gets the information and holds it
15 in confidence for the time being. And it sounds to me like
16 a lot of this stuff isn't going to have any particular
17 relevance to the case. And I understand Mr. Greenberg's
18 desire to keep his private banking records confidential. On
19 the other hand if there's something in there that is
20 indicative of a transfer that he won't stipulate to that's
21 certainly relevant.

22 MS. JENSON: And I would say the disposition of
23 the transfers as well. What defendant Greenberg did --

24 THE COURT: Are you going to follow it to the next
25 person?

1 MS. JENSON: Yes.

2 MR. BADWAY: Electric power and light, Judge.

3 THE COURT: I don't think they're interested in
4 that, but --

5 (Simultaneous speaking)

6 MS. JENSON: That's the issue with regard to the
7 other information that is not direct transfers from Cohmad
8 or BLMIS. What happened to that money? Where did it go?
9 What did defendant Greenberg do with it?

10 THE COURT: Well you're talking about you want
11 information that he paid more than household bills or his
12 mortgage or things like that?

13 MS. JENSON: I'm sorry?

14 THE COURT: Are you looking for records relating
15 to payments of mortgages and utilities and household bills?

16 MS. JENSON: Not necessarily, but also transfers
17 to other people in his family, for example.

18 MR. BADWAY: I gave a Hanukkah present or
19 something to a nephew or something --

20 THE COURT: That's a gift. That could be a
21 fraudulent transfer.

22 Well why don't you see if you can come up with a
23 protocol, otherwise my inclination is to have the records
24 turned over either to the trustee or to Mr. Greenberg with
25 some other method of working out what to do with it.

1 My inclination again is to have it turned over the
2 trustee, treat it as confidential, and then deal with its
3 disclosure at some future time.

4 MS. JENSON: And just to clarify that point then,
5 if these records are designated confidential they don't go
6 into our non-confidential data room where they're viewed
7 by --

8 THE COURT: Well there's a concern that thousands
9 of people would see it.

10 MS. JENSON: Right. That's not the case. They
11 are designated confidential, they go into the confidential
12 third-party data room where only people who use search terms
13 that implicate those documents can see them, and then only
14 after permission from the producing party.

15 So in this case JP Morgan and Citibank would have
16 to release the documents.

17 THE COURT: Well they may not care.

18 MS. JENSON: Right.

19 THE COURT: He's the one who cares, Mr. Greenberg.

20 MS. JENSON: Right. In our experience the banks
21 generally speak with the defendants before releasing
22 documents.

23 THE COURT: Well we'll deal with that, but my
24 inclination is just to hold it in confidence, and I don't
25 care how you do it, until disclosure of the documents is

1 worked out between the parties here. As I say, the banks --
2 he's not going to depend on the banks to protect his privacy
3 interests --

4 MS. JENSON: Understood.

5 THE COURT: -- he's in a better position to do
6 that. All right?

7 MR. BADWAY: Your Honor, just so that we're clear
8 on the record, Your Honor, we would strongly request from
9 the Court that the records be produced to me and not to the
10 trustee, and I'll hold them in escrow pending a
11 determination by the Court. If they're going to be produced
12 at all they should be produced to me, given --

13 THE COURT: What difference is it if they're
14 produced to the trustee under a confidentiality order?

15 MR. BADWAY: Well, Judge, given my experience with
16 the trustee and the fact that she mentions today, Judge,
17 that she talks about a tax return that wasn't produced to
18 them in the course of discovery, because it's part of a
19 settlement, which they're now using as part of this case.

20 THE COURT: I don't know anything about that.

21 MR. BADWAY: No, I know that, Judge. I know that.
22 I'm just raising it as an issue. I think in terms --

23 THE COURT: You're raising it as an issue, but
24 you're also raising it as an argument as to why you should
25 hold the bank records.

1 MR. BADWAY: Judge, what's the difference between
2 me having -- me holding them and the trustee? You're going
3 to order me to turn it over if that's your ultimate ruling,
4 Your Honor. That's what I'm saying. And at least we can
5 keep the privacy, we can keep the confidentiality without it
6 going into the netherworld of the trustee.

7 THE COURT: It's not going into the netherworld.
8 All right. I'll see you on the 1st.

9 MS. JENSON: Thank you.

10 MR. BADWAY: Thank you, Your Honor.

11 THE COURT: Thank you.

12 (Whereupon these proceedings were concluded at 10:31
13 AM)

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn South

Digitally signed by Dawn South
DN: cn=Dawn South, o, ou,
email=digital1@veritext.com, c=US
Date: 2015.08.21 15:35:08 -04'00'

Dawn South

AAERT Certified Electronic Transcriber CET**D-408

Date: August 20, 2015

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

[08-1789 - blmis]

Page 1

0	8	alternative 24:19	16:10,13,21,23 17:4
08-1789 1:6	88 13:20	americas 3:13	17:8,10,19,22 18:5
09-01182 1:11 2:16	a	amount 6:4 11:5	18:7,10,23 19:5,7
09-01305 1:20 2:18	aaert 33:8	13:13	19:10,15,18 20:6,11
1	abetting 16:22	anybody 27:20	21:8 22:13,22 23:5
10 28:12	able 7:20 11:13	anyone's 28:8	23:16,22 24:2,8,10
100 4:12 13:19	22:11	apologize 6:12	25:21 26:6,15,22
10017 4:14	absolutely 17:11	27:25	27:2,5,11,18,24
10036-6797 3:14	21:9	appeal 14:16	28:5,9 29:2,18 31:7
10103-3198 3:21	accept 8:16	application 14:19	31:15,21 32:1,10
10111 3:5 4:4	accepting 8:2	14:20	baker 3:2 4:1
1095 3:13	accompanied 8:8	applies 5:24	bank 16:7 18:24
10:04 2:6	account 7:11 20:25	apply 7:10	21:10 22:9,11,18,20
11501 33:25	21:2,3,14,18 27:6	approximately	23:4,6,18 31:25
1500 4:13	accounts 21:1,16	13:16	banking 17:14
16 16:7	23:3	archer 3:25	20:13 28:18
18 2:5	accurate 14:5 16:23	arguing 11:1 18:2,3	bankruptcy 1:1 2:1
1993 20:4 22:6	33:4	argument 26:14,17	2:12 20:3 24:17
25:20	action 5:16 18:22	31:24	banks 16:6 30:20
1st 28:2,3,9,12 32:8	actual 14:15 25:2,3	ariel 6:5	31:1,2
2	adamantly 8:24	ascot 3:19,19 5:14	bar 10:5
20 33:12	add 14:13	5:14,24 6:1,15,20	based 25:1 26:12
2010 23:10	addressed 25:13	6:21 8:8 10:7,13,15	basically 14:9 25:6
2011 23:10 25:16	addresses 26:1	11:12,16 13:13,14	basis 11:8
2015 2:5 33:12	adduced 6:24	asked 14:20	bayou 11:4
235 13:16	adequately 25:17	asking 20:12	behalf 13:14
280 10:15 13:11,16	adjourn 26:16	aspects 8:20	belief 22:3
14:8	28:11	asserts 7:25	believe 6:21,25 7:8
3	admitted 7:15	assuming 18:11,12	7:13,18 9:11,23
300 33:24	adv 1:11,20 2:16,18	attempted 20:1	10:4,6,19 11:2,3,17
31st 28:2	adversary 11:23	21:4	13:10,24 14:2,4
330 33:23	12:12 14:14	attention 26:3	25:16
4	agree 10:1 15:4	attorney 3:12 4:11	bernard 1:17
4 23:14	agreed 10:24	attorneys 3:3,19 4:2	bernie 8:14,15
408 33:8	ahead 15:24 23:19	attracted 8:10	bernstein 2:11
45 3:4 4:3	23:20	august 2:5 33:12	best 26:15
5	aiding 16:22	available 28:2,6	better 13:25 31:5
502 10:9,25 11:6	air 12:2	avenue 3:13,20 4:12	beyond 24:24 25:4
12:6 13:17,21 14:12	al 1:12	aware 22:15	27:8
54 14:20	allegation 16:15	b	bills 29:11,15
6	allegations 6:23 7:9	b 2:10 14:20	blindness 7:4,23
666 3:20	16:25 17:15 19:14	back 11:10,14 12:4	8:20 9:7
	alleged 19:17	19:24 22:6 23:10	blmis 7:11 16:16
	allow 10:17 13:19	24:24 25:4,16,20	20:22,23 21:1,3,22
	allowed 13:15 24:5	26:3,9 27:23	21:23,25 22:10 23:3
		badway 4:16 15:16	24:17 26:25 27:6
		15:18,18,24,25	29:8

[blunt - different]

Page 2

blunt 11:23 body 11:3 bother 8:19 bottom 11:25 24:15 bowling 2:2 breakdown 14:5 brian 3:9 brief 9:14 briefing 9:13,18 briefs 7:20 11:9 bring 26:2 broker 16:11 brought 18:15 built 19:19 business 28:1	claim 5:25 6:1 10:8 10:9,12,12,17 11:14 11:21 13:7,11,11,12 13:15,20,21 14:9,11 14:12 18:16,19 19:1 claims 5:22 6:8,14 6:15,17 11:6 18:17 18:18 clarification 24:18 24:23 clarify 30:4 clear 10:24 28:6 31:7 client 16:6,7,8,10 16:17 17:1,12,13 18:25 19:1,3,8 20:2 21:11 23:19 cohmada 1:21 16:11 16:16,17 17:2 19:4 20:8,11,17,22 21:9 21:21,21,25 22:10 24:17 27:1,8 29:7 cohmada's 27:3 collect 10:2 11:16 come 10:15 14:8 25:23 26:17 27:23 29:22 comfortable 8:25 24:14 coming 21:14 22:2 commission 17:1 commissions 17:16 21:6 communications 14:6 compensation 16:14 18:1,3 20:17 complaint 6:23 18:4 19:10 25:18 conceive 11:12 concern 30:8 concluded 32:12 conclusory 19:16 conference 2:16 5:7 15:5 confidence 24:20 28:15 30:24	confidential 17:14 28:18 30:2,5,6,11 30:11 confidentiality 31:14 32:5 confirm 21:20 22:8 consider 7:15 consideration 17:7 19:23 21:6 considering 11:5 considers 6:23 constantly 12:4 contemplation 24:5 contend 27:7 contention 19:11 context 19:17 convinced 27:16 corporation 1:6,22 correct 5:18 6:9 7:5 14:10 16:19 17:8,11 23:1,13 25:8 counsel 5:14 24:3 country 33:23 couple 9:25 16:3 course 31:18 court 1:1 2:1 5:2,5 5:10,13,19 6:3,7,10 6:13,23 7:3,6,22 8:4 8:7,10,13 9:2,5,20 9:25 10:10,20,22 11:19 12:15,18,23 13:4,18,23 14:3,7 14:17,23,25 15:4,9 15:14,17,22,24 16:8 16:12,15,20,22 17:3 17:5,9,18,21 18:2,6 18:8,15 19:3,6,9,11 19:16,21 20:6,9,12 20:21,25 21:4,12,17 22:1,14,20,23 23:4 23:9,15,21,23 24:7 24:9,12,19,25 25:3 25:6,9,15,19,23 26:12,19,23 27:4,7 27:13,19,23 28:3,7 28:11,24 29:3,10,14 29:20 30:8,17,19,23	31:5,9,11,13,20,23 32:7,11 credit 11:10,21 12:25 credits 10:11 customers 10:11
c			d
c 3:1 5:1 33:1,1 calendar 5:5,6 called 7:10 candor 22:14 cards 19:20 care 30:17,25 cares 30:19 case 1:6,11,20 2:16 2:18 5:7 6:25 8:21 10:12 11:3,4 13:25 14:15 16:18 17:12 22:4 25:25 28:17 30:10,15 31:19 cases 11:3 13:8 16:20,22 certain 23:2 certainly 25:23 28:21 certified 33:8 certify 33:3 cet 33:8 challenged 8:1 chambers 26:4 chase 2:20 check 23:2 24:4 circumstances 19:13 citi 26:10 citibank 2:19 21:15 23:7,17 30:15			d 5:1 10:25 12:6 33:8 data 30:6,12 date 9:13,19 12:14 15:2 33:12 david 3:7 dawn 2:25 33:3,7 day 11:25 12:7 13:6 28:4 deal 13:19 14:21,22 24:21 30:2,23 dealing 14:21 debtor 1:7 dechert 3:11 decision 8:21 deduced 6:24 defendant 1:23 4:11 15:19 20:16 21:2 28:23 29:9 defendants 1:13 3:12 5:15,23,25 6:18 11:16 13:19 18:22 30:21 delay 9:13 demonstrated 18:25 depend 31:2 depending 9:17 18:18 deposition 7:16 27:12 designated 30:5,11 desire 28:18 detailed 16:2,2 determination 31:11 difference 31:13 32:1 different 17:9 19:19 23:18

[difficult - household]

Page 3

difficult 11:12 diligence 7:25 8:1,5 direct 21:3 29:7 directly 20:23 21:21 21:22 disagree 8:18 disallowed 10:12 disclosure 30:3,25 discovery 6:24,25 20:15 22:6 25:1,6 25:11,17 31:18 discuss 12:15 14:25 24:13 27:20 discussions 14:2 dismiss 18:4,16 25:2,14 dismissed 18:17 dispose 7:20 9:1 24:21 disposed 5:16 9:7 9:11 11:17 disposition 28:22 distribute 12:4 district 1:2 document 23:10 documents 27:14 27:15 30:13,16,22 30:25 doing 8:5 due 7:25 8:1,5 14:14	24:16 25:19 equity 10:8,12,17 13:6,15 14:9,11 ernest 4:16 15:18 escrow 31:10 esq 3:7,8,9,16,24,25 4:6,7,8,16 essentially 10:25 17:2 esterina 4:8 15:21 et 1:12 everybody 9:3 17:21 everybody's 12:5 evidence 6:24 exactly 17:4,11 18:7 example 29:17 exercise 9:8 expected 22:14 experience 30:20 31:15 expert 7:14,15 explain 12:9 explanatory 16:1 exposed 17:15 extent 6:16 10:8	fine 8:3 12:14 28:9 first 5:9,10,22,23,25 7:24 10:10 23:5 fix 15:6 flags 7:10 follow 18:21 26:7 28:24 foregoing 33:3 fox 4:10 15:18 frame 9:17 fraudulent 29:21 fulbright 3:18 full 6:4 20:15 fund 3:19 11:16 funds 7:13 further 26:14 future 30:3	28:23 29:9,24 30:19 greenberg's 21:18 28:17 grounds 5:23 6:19 guess 5:7,14 7:3 11:19 12:15 23:24 23:25 guy's 20:12
		g	h
		g 5:1 gabriel 6:5 general 6:19 generally 30:21 generic 7:10 gift 29:20 giuliani 4:8 15:21 give 11:21 22:14 26:19 27:19 given 11:11 16:25 31:12,15 go 8:23,24 14:7 15:24 18:13 19:24 22:18 23:17,19,20 24:24 25:4,19 26:3 26:9 29:8 30:5,11 going 9:8 11:20 12:25,25 13:7 15:1 19:13 21:13 22:3,6 22:11 24:14 26:13 27:20,25 28:16,24 31:2,11 32:2,6,7 good 12:22 15:16 15:17,23,25 17:6 19:22 granted 9:1 green 2:2 greenberg 4:11 15:19 20:16 21:2,17	h 1:15 10:9 11:6 13:17,21 14:12 hand 28:19 hanukkah 29:18 happened 29:8 happy 21:25 22:5 hear 15:14 heard 25:10 hearing 2:16,18 27:15 highlight 16:3 hoang 3:8 hold 24:20 30:24 31:10,25 holding 32:2 holds 28:14 hon 2:11 honor 5:3,18,20,21 6:6,9,12 7:8,18 8:17 8:19,24 9:10 10:19 10:19 11:2,18 12:9 12:10,13 13:2,9,22 14:1,14 15:7,11,16 15:25 16:1,4,10,21 16:23 17:4,8,10,10 17:11,13,20,23 18:7 18:10,23 19:5,7 21:8 22:13,13,17 23:13 24:18 25:8 26:7,7,15 28:5,10 31:7,8 32:4,10 honor's 9:17 14:15 hostetler 3:2 4:1 house 19:20 household 29:11,15

[identify - n.a.]

Page 4

i	j	knowledge 9:6 25:2 25:4 26:24,24	material 7:1,19 matter 9:9 10:18 11:12,20 27:20 matters 5:6 maximum 13:11 mean 8:13 12:3 20:4 meet 8:12,12 meetings 8:8 mentioned 27:6 mentions 31:16 merit 9:24 27:16 merkin 1:12 5:7,10 5:15,22,25 6:17,19 7:24 8:12,12,15 11:16 merkin's 7:4,23 9:6 method 29:25 million 10:15 13:11 13:16,16 14:8 mills 3:24 mineola 33:25 misunderstanding 11:23 money 10:13 11:20 12:3,5 13:1 16:16 16:16 17:20,25 18:13,21 19:3,8,12 21:14,24 29:8 monies 20:7 months 9:15 morgan 2:19 21:15 23:7,17 26:10 30:15 morning 15:16,17 15:23,25 mortgage 29:12 mortgages 29:15 motion 2:18 5:6,16 8:25 9:2,20 12:18 15:2,14 18:16 25:10 25:14 26:2,16 27:16 motions 25:2 move 21:5
identify 18:8 immediately 10:7 implicate 30:13 inappropriate 14:19 inclination 29:23 30:1,24 includes 7:12 income 22:24 23:1 indicative 28:20 indiscernible 11:24 individual 17:25 inflammatory 7:9 information 17:14 20:18 24:14,15 25:25 26:14 27:9 28:14 29:7,11 informed 14:14 initial 10:3 inquire 24:16 instance 22:6 intend 14:16 intent 14:15 interested 29:3 interests 31:3 interfere 28:7 interpretation 25:22 intimately 8:20 investigating 20:24 investigation 27:10 investment 1:18 investor 1:5 7:11 investors 7:12 8:8 8:10 irving 1:15 issue 6:22 7:1,3,4,7 7:16,20 17:9 19:25 24:3,9,11 26:1 29:6 31:22,23 issued 26:1 issues 5:21 7:23 19:22 21:5 it'd 9:7	j 3:7 jami 3:24 jenson 4:6 15:20,20 16:19 20:10,14,23 21:2,15,19 23:1,13 24:18,23 25:1,5,12 25:16 27:9,22,25 28:22 29:1,6,13,16 30:4,10,18,20 31:4 32:9 jonathan 4:11 15:19 jp 2:19 21:15 23:7 23:17 26:10 30:15 judge 2:12 14:19,21 14:22 17:22 19:10 19:18 20:6 21:10 22:22 23:5,16 24:2 24:2 25:12,13,20,21 25:22,22,25 26:6 27:2,5,6,11,12,18 29:2 31:15,16,21 32:1 judges 10:19 judgment 5:16,23 7:21 9:2,12,12,14 9:19,21 10:6 11:9 12:19 15:2 18:12 judgments 11:4,5 judith 3:25	l l 1:17 labor 28:4 lacks 27:16 laid 5:20 lan 3:8 larger 11:13 law 10:24 11:23 12:3 leave 11:24 leaves 7:16 left 7:1 legal 33:22 letter 6:11 8:7,18 10:1 15:5 letters 5:13,21 25:24 lifland 25:13,20,25 lifland's 25:22 light 29:2 limiting 26:12 line 11:25 24:16 liquidation 1:16 listen 22:5 little 18:10 living 18:18 llc 1:18 llp 3:11,18 4:10 look 18:19,24 22:8 24:12 27:13 looked 19:14 looking 20:4 28:7 29:14 lose 14:8 lot 9:2 28:16 lr 25:6	n n 3:1 5:1 33:1 n.a. 2:19,20
	k karin 4:6 15:20 kathryn 4:7 katie 15:20 keep 28:18 32:5,5 kind 22:2 knew 19:12 know 8:11 9:16 12:11,12 19:16,18 19:19 20:4,12,15,17 20:25 21:13 22:2,7 23:23 24:7,10 25:9 26:2 27:24 31:20,21 31:21	m m 2:11 4:7 madoff 1:17 5:2 8:2 8:8,13 making 15:2 manufacture 12:2 march 9:17 12:14	

[necessarily - regarding]

Page 5

necessarily 27:1 29:16 need 13:25 20:20 21:10 24:21 25:25 neil 3:16 nephew 29:19 net 10:8,11,17,20 10:20 11:4,7,10 13:6,15 14:9,11 netherworld 32:6,7 netted 13:6 never 8:5 12:3 23:6 new 1:2 2:3,3 3:5,14 3:21 4:4,14 non 2:19,19 30:6 norton 3:18 notwithstanding 6:22 7:9 number 10:16 19:19 numbers 11:11 ny 3:5,14,21 4:4,14 33:25	p p 3:1,1 5:1 page 23:14 paid 16:17 17:20,21 29:11 papers 16:1 park 4:12 part 31:18,19 particular 17:12 23:8 24:6 28:16 parties 16:5 20:1 31:1 partner 6:20 partners 5:24 6:1 6:15,20,21 13:13,14 parts 10:23 party 2:19,19 30:12 30:14 pause 5:12 15:13 pay 10:4,16 paying 12:4 payment 10:20 11:8 11:8,10,11,13 13:13 payments 29:15 payroll 27:3,4,8 peace 8:14,15 pending 31:10 people 8:11 29:17 30:9,12 percent 13:20,20 perfect 15:7 permission 30:14 person 23:16 28:25 ph 6:5 picard 1:9,15 pike 17:25 place 26:23 plaintiff 1:10,19 plans 28:8 plaza 3:4 4:3 plead 19:23 pleading 18:18 please 26:2 pled 25:17 plus 13:16 14:11 point 8:23,23 9:8 11:22 13:4 23:24	24:23 30:4 points 9:25 16:4 portion 6:19 position 16:3 31:5 possession 23:18 power 29:2 practical 10:18 11:12,15,19 preceding 20:3 prepared 13:18 present 29:18 presumably 16:17 pretty 10:24 11:17 12:22 prevail 6:1 prevails 13:12 primary 6:2 privacy 31:2 32:5 private 18:24 20:13 28:18 pro 18:19 probably 26:15 problem 12:12 procedure 28:13 proceeding 18:20 20:5 proceedings 32:12 33:4 produced 31:9,11 31:12,14,17 producing 30:14 proper 7:25 propose 9:16 26:5,6 protect 31:2 protection 1:6 protocol 29:23 prove 19:6,7,24 proven 18:25 provided 24:4 public 17:15	r r 2:10 3:1 5:1 33:1 raise 24:10 raised 9:25 24:3 25:10 26:2 raising 31:22,23,24 rakoff 14:19,22,22 25:12 read 22:23 26:3 readily 11:17 reading 16:25 ready 9:9,11 reality 11:15 really 7:3 14:22 reason 16:24 receive 19:3 received 5:13 17:16 18:1 19:12 20:2,7 20:16,17,19 21:9,24 26:21 27:5,7 receiver 3:19 receiving 16:14 recognized 13:10 record 21:13 23:4 28:5 31:8 33:4 records 16:7 18:24 20:8,9,11,13 21:11 21:22 22:4,9,10,18 22:21,25 23:6,8,11 23:17,19,22,24,25 26:9 27:3,4,8 28:18 29:14,23 30:5 31:9 31:25 recover 6:16,17 11:20 recovered 6:4 11:5 recoveries 13:6,12 recovers 13:1 recovery 10:9 11:9 red 7:10 reemphasize 12:23 referred 23:3 reflected 21:21,22 regard 12:10 29:6 regarding 7:7,23 26:18,20
o o 2:10 5:1 33:1 o'clock 28:12 objection 12:11 objections 23:11 obtained 18:12 okay 5:11,19 6:10 12:21 14:17,24 15:10 19:21 28:7 old 33:23 once 14:10 ongoing 27:10 open 20:6 opinion 14:15 opportunity 9:24 27:19 opposed 8:25 opposition 16:2 23:14 order 5:24 31:14 32:3 ought 24:12 outlined 12:12	q quash 2:18 5:7 15:15 question 6:3 14:21 questions 8:16 9:6 quite 12:8 25:9,10		

[regardless - thank]

Page 6

<p>regardless 11:7 registered 20:18 related 22:10 relating 29:14 release 30:16 releasing 30:21 relevance 28:17 relevant 28:21 remain 6:14 remainder 5:15 repay 13:1 repays 10:13 representation 26:20 representatives 20:19 represented 14:5 22:24 request 9:18,19 23:10 26:9 31:8 requests 22:6 require 26:13 respect 5:22 14:14 response 23:9 rest 24:21 results 8:16 return 31:17 returns 20:24 22:24 23:2 24:4 right 5:8 6:7 12:1 12:24 13:2,23 14:7 14:20,25 15:3,9,14 16:12,21 17:18 18:4 21:19 25:15 26:16 28:11 30:10,18,20 31:6 32:8 rights 10:14 road 17:25 18:14 33:23 rockefeller 3:4 4:3 room 30:6,12 ross 3:18 rothschild 4:10 15:18 routinely 10:20 rule 25:1,7,11,17,22</p>	<p>ruled 25:20 ruling 26:1 32:3 s s 3:1 5:1 salary 17:16 satisfied 10:7 satisfy 20:20 saying 11:19 12:3 16:24 17:23 23:18 23:19 24:8 25:3 26:8 32:4 says 8:15,18 schedule 9:8,14,17 9:18 12:13,16,19 15:1,1,6 scheduling 12:10,11 scholz 4:6 scope 21:24 search 30:12 securities 1:5,18,21 see 22:19 26:17 29:22 30:9,13 32:8 seek 25:6 seeked 17:1 seeking 16:6 20:15 21:19 24:24 self 16:1 sense 8:23 sent 17:24 september 28:3,9 28:12 set 10:25 settled 12:24 settlement 11:24 14:2,6 24:5 31:19 settlements 10:11 10:23 13:7 settles 13:8 share 17:2 sheehan 3:7 5:3,8 5:11 6:6,9 7:22,24 8:5,9,11,14 9:4 11:18,22 12:17,21 12:24 13:3,10 14:4 14:13,18,24 15:11 simple 9:6</p>	<p>simply 24:19 simultaneous 29:5 sit 21:23 situation 24:1 six 20:3,5 24:17,24 25:4 26:10,12 small 6:18 smb 1:11,20 solutions 33:22 song 3:9 soon 27:24,24 sophisticated 7:12 sorry 25:13 29:13 sort 19:19 sounds 9:21 15:7 28:15 south 2:25 33:3,7 southern 1:2 speak 30:21 speaker 15:12,23 25:8 speaking 29:5 specific 26:1 spring 9:16 stand 10:14 standard 14:18 stands 17:12 start 19:21 26:23 27:14 starting 7:24 stated 6:10 statement 14:5 statements 7:19 states 1:1 status 2:16 steiner 3:16 5:18,20 6:12,14 7:5,8 9:10 9:23 10:6,18,22 11:2 13:2,9,22,24 14:4,10 15:3,7,10 stipulate 20:2,6,7 21:4,10 28:20 stipulation 21:9 22:17 26:20 streamlining 22:5 strongly 31:8</p>	<p>stuart 2:11 stuff 12:22 26:3 28:16 sub 18:19 subject 13:7 17:13 subpoena 2:18 23:7 subpoenas 16:5 17:14 subsequent 6:8,18 10:3 16:9,18 17:24 18:16,19,21 19:1 successful 6:17 sued 16:8,11,13 suggest 10:2 12:2 13:5 25:24 28:13 suggesting 5:15 21:8 suggestion 22:1 suite 4:13 33:24 summary 5:16,23 7:20 9:2,12,12,14 9:18,21 11:9 12:18 15:2 suppose 22:9 supposed 7:14 17:15 supposedly 12:5 sure 12:17 18:23 20:15 26:4,22 27:18 surviving 25:2 t t 33:1,1 table 26:16 talk 12:21 21:23 25:24 talking 17:5 29:10 talks 24:5 31:17 tax 24:4 31:17 taxes 17:20,21 tell 5:19 7:6 9:20 24:15 terms 17:23 22:17 22:18 23:16 26:17 30:12 31:22 testimony 7:14 thank 15:7,11,12 32:9,10,11</p>
---	--	--	--

[thanks - zunno]

Page 7

thanks 15:9 theory 16:18 thin 12:2 thing 14:13 things 29:12 think 8:1 9:12,14 12:25 14:1,18 16:23 18:11,20 19:9 22:1 23:9 24:12 29:3 31:22 third 16:5 30:12 thought 16:15 22:20,23 thousands 30:8 time 8:22 9:17,22 26:4 28:15 30:3 today 20:7 31:16 told 26:13 transcribed 2:25 transcriber 33:8 transcript 33:3 transfer 16:20 17:3 18:16,19 21:13 28:20 29:21 transferee 6:8 16:9 16:18 19:2 transferees 6:18 10:3,4 17:24 18:21 transfers 6:4,15 17:6 18:6,9 19:22 19:25 20:2,16,19,21 20:23 21:5,20,24 22:8,10 24:16 26:20 26:25 28:23 29:7,16 traveling 28:1 treat 30:2 triable 6:22 trial 7:2 9:7,8,13,15 9:16,19 11:10 12:14 14:8 15:2 trials 13:5 tried 7:17 9:9,11 11:4 12:9 true 8:9 33:4 trustee 1:15 3:3 4:2 5:25 6:4 10:2,9,10 10:14,16,16,23 13:1	13:8 15:21 16:6 18:8,11,12,15,20 22:8,9 23:23 24:13 24:16,20 28:14 29:24 30:2 31:10,14 31:16 32:2,6 trustee's 16:2 24:3 try 13:25 trying 14:22 18:8 turn 22:4 32:3 turned 22:24 29:24 30:1 turning 23:24 turns 7:3 9:5 two 5:5,6,21,23 6:4 6:15 12:15 13:11 16:5	w w 3:9 wait 26:16 want 5:8 12:19 14:13 16:3 22:10 27:23 29:10 wanted 5:4 8:12 22:15 24:10 wants 8:24 10:14 12:13 14:1 warrant 7:1 waste 9:21 way 11:8,10,11 13:8 22:7 24:2,13,22 27:14 ways 20:19,21 we've 25:16 week 27:23 28:1,6 whatsoever 12:13 willful 7:4,23 8:20 9:6 willing 21:23 wins 12:1 wire 21:13 wondering 21:12 word 8:2 words 8:17 work 9:3 28:13 worked 31:1 working 29:25 works 25:11 worth 16:7 write 15:5 writing 8:19	york 1:2 2:3,3 3:5 3:14,21 4:4,14	
		z	zunno 4:7 15:20	
		u		
		u.s. 2:1,12 ultimate 11:4 32:3 unable 10:4 understand 9:4 12:8 13:9 14:23 17:22 19:11 25:9,11 28:17 understanding 16:25 22:3 understood 9:23 20:14 31:4 undisputed 7:19 unidentified 15:12 15:23 25:8 united 1:1 universe 20:16 use 24:6 30:12 utilities 29:15		
	v			
	v 1:11,20 vacation 27:20 28:1 28:8 veritext 33:22 vibbert 3:24 viewed 30:6 virtually 8:1	x x 1:4,8,14,24		
		y		
		yeah 12:2 14:7 16:15 17:3,10 18:15 19:15 23:15 25:8 year 6:4,15 8:21 13:11 years 16:7 20:3,5 23:2 24:17,24 25:4 26:10,12		

Exhibit 82

CUSTOMER CLAIM

Claim Number _____

Date Received _____

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

(Please print or type)

Name of Customer: Ascot Partners, LP
Mailing Address: 450 Park Avenue, #3201
City: New York State: NY Zip: 10022
Account No.: 1-A0058-3-0, 1-A0058-4-0
Taxpayer I.D. Number (Social Security No.): 13-3693341

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

1. Claim for money balances as of **December 11, 2008**:

- a. The Broker owes me a Credit (Cr.) Balance of \$1,861,885,900
but in no event less than \$560,494,555.
- b. I owe the Broker a Debit (Dr.) Balance of \$0
- c. If you wish to repay the Debit Balance
please insert the amount you wish to repay and
attach a check payable to "Irving H. Picard, Esq., Trustee for Bernard L.
Madoff Investment Securities LLC."
If you wish to make a payment, it **must be enclosed** \$0
with this claim form.
- d. If balance is zero, insert "None." None¹

¹ Ascot Partners, LP assumes question 1.d. refers to the net balance owed to Bernard L. Madoff Investment Securities, LLC.
SRZ-10846152.3

2. Claim for securities as of **December 11, 2008**:

PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.

	<u>YES</u>	<u>NO</u>
a. The Broker owes me securities	<u>N/A</u>	<u>N/A</u>
b. I owe the Broker securities	<u>N/A</u>	<u>N/A</u>
c. If yes to either, please list below:	<u>N/A</u>	<u>N/A</u>

Date of Transaction (trade date)	Name of Security	Number of Shares or Face Amount of Bonds	
		The Broker Owes Me (Long)	I Owe the Broker (Short)
<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.

NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.

- | | <u>YES</u> | <u>NO</u> |
|---|------------|---------------------------|
| 3. Has there been any change in your account since December 11, 2008? If so, please explain. | _____ | _____X_____ |
| 4. Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker? | _____ | _____X_____ |
| 5. Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker? | _____ | _____X_____ |
| 6. Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s) | _____ | _____X_____ |
| 7. Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming. | _____ | _____X_____ |
| 8. Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers. | _____ | _____X ² _____ |
| 9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? if so, give name of that broker. | _____ | _____X_____ |

Please list the full name and address of anyone assisting you in the preparation of this claim form: Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022, Attn: Lawrence V. Gelber and David J. Karp.

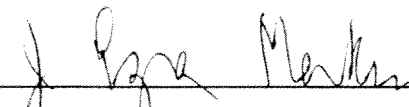
If you cannot compute the amount of your claim, you may file an estimated claim. In that

SRZ-10846152.3
Ascot Partners, LP assumes that the definition of "any person" in question 8 excludes Bernard L. Madoff.

case, please indicate your claim is an estimated claim.

**IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM.
CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR
IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.**

**THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY
INFORMATION AND BELIEF.**

Date 3/2/09 Signature 
J. Ezra Merkin
General Partner of Ascot Partners, LP

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, e.g., corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

**This customer claim form must be completed and mailed promptly,
together with supporting documentation, etc. to:**

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

ATTACHMENT TO CLAIM

THIS CLAIM IS AN ESTIMATED CLAIM.

THIS CLAIM IS FILED WITHOUT PREJUDICE TO THE RIGHT OF EACH INVESTOR IN ASCOT PARTNERS, LP TO FILE, ASSERT, AND PROSECUTE ANY CLAIM AS A CUSTOMER OF BERNARD L. MADOFF INVESTMENT SECURITIES, LLC OR OTHERWISE, TO THE FULLEST EXTENT PERMITTED BY LAW.

Ascot's Express Reservations

Ascot Partners, LP ("Ascot") reserves its right to amend, modify, and/or supplement any of the claims set forth herein, and to file in accordance with Court orders and procedures amended, modified, supplementary, and/or other additional claims, including, but not limited to, claims under Section 502(h) of Title 11 of the United States Code, or similar law, that Ascot may have against Bernard L. Madoff Investment Securities, LLC ("BMIS").

Ascot reserves the right to attach, produce, and/or rely upon additional documents supporting its claims and additional documents that may become available after further investigation or discovery.

This claim is filed under compulsion of the deadline to file claims and is filed to protect Ascot from forfeiture of its claims. The filing of this claim shall not constitute a waiver or release of any of Ascot's rights:

- Against any person, entity, or property;
- To contest the jurisdiction of this Court with respect to the subject matter of the claims set forth herein, to object to any other proceeding commenced with respect thereto, or to object to any other proceeding commenced in this case against or otherwise involving Ascot; and/or
- To elect remedies or choice of law.

The filing of this claim shall not constitute a concession or admission by Ascot of liability or facts with respect to any claim that has been or may be asserted against Ascot or BMIS by third parties.

Nothing contained herein shall limit the rights of Ascot to file any proceeding or to take any action concerning its claims.

Nothing in this claim is intended to nor shall waive or release any right, remedy, or claim of Ascot against any person or entity, including, without limitation, any affiliate of, or entity otherwise related to, BMIS.

If any person or entity asserts claims against Ascot, Ascot intends to defend such claims. Ascot reserves all rights, defenses and remedies thereto, including, without limitation, the rights of setoff or recoupment, which may or may not affect the total amount of Ascot's claims.

Documentation Available Upon Request

The claims described herein are evidenced by various agreements, instruments, and other documents that are too voluminous to attach hereto. Copies of the agreements, instruments, and other documents are available from Ascot's attorneys upon reasonable request by the Trustee.

Exhibit 83

C O N F I D E N T I A L

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In Re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Adv.Pro.No.
08-01789(BRL)

Debtor.

-----x
IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,

Plaintiff,

Adv.Pro.No.
09-1182(BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

-----x

DEPOSITION of JEROME BALSAM as taken
by and before MONIQUE VOUTHOURIS, Certified Court
Reporter, RPR, CRR and Notary Public of the States
of New York and New Jersey, at the offices of Baker
& Hostetler, 45 Rockefeller Plaza, New York, New
York, on Tuesday, October 25, 2011, commencing at
11:00 a.m.

88			90		
1	strategy. Is that a term that you used at all with	12:47:08	1	mean?	12:50:03
2	regard to that Madoff methodology?	12:47:10	2	A. Meaning that the mechanism by which	12:50:04
3	A. I did not use that term prior to	12:47:13	3	the manager achieved profits was not disclosed to	12:50:08
4	December 11th, 2008.	12:47:15	4	outside parties.	12:50:15
5	Q. But what you've described is what you	12:47:17	5	Q. And would that accurately describe,	12:50:21
6	understood Madoff to be doing?	12:47:19	6	to your understanding, assuming he had a strategy,	12:50:24
7	A. I think what I described is	12:47:21	7	what Madoff's strategy was?	12:50:27
8	consistent with that term.	12:47:24	8	A. I'm not certain whether the Madoff	12:50:29
9	Q. Okay. And how did you learn about	12:47:27	9	strategy, as I understood it, fit the definition of	12:50:33
10	the strategy Madoff claimed to be employing?	12:47:29	10	a black box. I more often heard it in the case of	12:50:36
11	A. My father told me about it.	12:47:33	11	managers such as James Simons where no one knew what	12:50:42
12	Q. What does your father do?	12:47:36	12	transactions he was entering and he would just	12:50:46
13	A. My father at the time was the chief	12:47:39	13	indicate this is the return that I achieved.	12:50:49
14	financial officer of a public company.	12:47:41	14	Q. Okay. So you draw a distinction	12:50:53
15	Q. Which one?	12:47:44	15	between having no information whatsoever as opposed	12:50:57
16	A. The Fur Vault.	12:47:44	16	to not knowing when he enters the market, when he	12:50:59
17	Q. F-e-r-v-a-l-t?	12:47:48	17	exits the market, what the triggers are and things	12:51:02
18	A. F-u-r new word Vault, V-a-u-l-t.	12:47:50	18	of that nature?	12:51:05
19	Q. Okay. Trying to be too cute.	12:47:56	19	A. Correct.	12:51:06
20	Do you recall approximately when it	12:48:06	20	MR. STEINER: Objection to form.	12:51:07
21	was that he told you about this strategy?	12:48:10	21	Q. Prior to December of '08, did you	12:51:16
22	A. I believe it was in the 1980s.	12:48:12	22	ever have occasion to discuss Madoff's performance	12:51:20
23	Q. So before you ever joined Gabriel,	12:48:15	23	with anybody at Gabriel?	12:51:25
24	you had an idea what Madoff was supposedly -- how he	12:48:19	24	A. I recall one conversation like that.	12:51:27
25	was supposedly investing?	12:48:24	25	Q. What was that -- when was that	12:51:35
89			91		
1	A. That's correct.	12:48:25	1	conversation?	12:51:37
2	Q. From the time you joined Gabriel, did	12:48:26	2	A. I don't remember when it was.	12:51:38
3	anyone at Gabriel, any investment managers ever try,	12:48:33	3	Q. Who was involved in it?	12:51:41
4	to your knowledge, to replicate the Madoff strategy?	12:48:38	4	A. Mr. Merkin and I.	12:51:43
5	A. I'm not aware whether they did or	12:48:40	5	Q. And what do you recall about it?	12:51:46
6	not.	12:48:44	6	A. I recall Mr. Merkin saying that he	12:51:47
7	Q. Did you ever hear any discussion of	12:48:44	7	has been fortunate to be able to work professionally	12:51:51
8	attempting to do so either in the past or on a going	12:48:51	8	with two very astute managers, one of them is Steven	12:51:55
9	forward basis?	12:48:56	9	Feinberg and the other one was Bernard Madoff.	12:52:01
10	A. No.	12:48:57	10	Q. Was that the sum and substance of the	12:52:05
11	Q. Was your father investing with	12:48:58	11	discussion of Madoff?	12:52:07
12	Madoff?	12:49:23	12	A. That's the part that I recall.	12:52:09
13	A. There was a period of time in which	12:49:24	13	Q. Okay. And other than that, you don't	12:52:10
14	he was.	12:49:26	14	recall any conversation prior to December of '08	12:52:14
15	Q. But he got out?	12:49:29	15	with anybody involving Madoff. Is that right?	12:52:16
16	MR. STEINER: Objection to form.	12:49:31	16	A. That's correct.	12:52:19
17	A. My understanding is that he closed	12:49:32	17	Q. All right. And just let me ask some	12:52:20
18	the position prior to December of 2008.	12:49:34	18	specifics, did you have any discussion prior to	12:52:23
19	Q. He was a wise man.	12:49:39	19	December of '08 with anybody at Gabriel concerning	12:52:27
20	I've also heard others refer to the	12:49:47	20	Madoff's ability to produce consistent returns in	12:52:31
21	Madoff purported strategy as a black box strategy.	12:49:54	21	both good and bad markets?	12:52:33
22	Have you ever heard that term?	12:49:59	22	MR. STEINER: Objection to form.	12:52:35
23	MR. STEINER: Objection to form.	12:50:00	23	A. I believe when I helped Mr. Merkin	12:52:39
24	A. I have.	12:50:01	24	finalize a PowerPoint presentation that provided	12:52:44
25	Q. And what do you understand that to	12:50:02	25	information on the funds for which he was	12:52:50

92			94		
1	responsible, that he might have observed that when	12:52:53	1	MR. STEINER: Objection to form.	12:55:19
2	you look at Ascot's returns, the consistency of	12:52:57	2	A. I don't recall such an explanation.	12:55:20
3	positive returns and positive compounding made for a	12:53:01	3	Q. Okay. Now, at some point you became	12:55:23
4	very good long-term result.	12:53:05	4	aware of the fact that portions of Ariel Fund and	12:55:32
5	Q. But just all you recall is that sort	12:53:09	5	Gabriel Fund were also invested through BLMIS. Is	12:55:36
6	of general discussion of it?	12:53:12	6	that correct?	12:55:41
7	A. Yes.	12:53:14	7	A. Yes.	12:55:41
8	Q. And how about did you ever have a	12:53:14	8	Q. And do you recall when you learned of	12:55:42
9	conversation that you can recall with anybody at	12:53:17	9	that?	12:55:44
10	Gabriel concerning the total value of assets under	12:53:19	10	A. I believe it was no later than 2002.	12:55:44
11	management at Madoff?	12:53:24	11	Q. And how did that come to your	12:55:51
12	A. No.	12:53:25	12	attention?	12:55:55
13	Q. Did you have any idea, prior to	12:53:26	13	A. There was a spreadsheet that I was	12:55:55
14	Madoff's arrest, what the total amount of assets	12:53:34	14	working on at that time that so reflected.	12:55:58
15	under management Madoff had might have been?	12:53:38	15	Q. And what were you working on the	12:56:05
16	A. No.	12:53:41	16	spreadsheet for?	12:56:10
17	Q. Did you ever have a conversation with	12:53:42	17	A. As I recall it, I was performing a	12:56:11
18	anybody at Gabriel about Madoff's strategy of going	12:53:45	18	ministerial function on that spreadsheet in	12:56:13
19	into treasuries at the end of each quarter?	12:53:48	19	Mr. Autera's absence from the office, I believe, and	12:56:18
20	MR. STEINER: Objection to form.	12:53:52	20	the document in question showed an allocation to	12:56:23
21	A. I was aware of the existence of that	12:53:53	21	Madoff.	12:56:26
22	strategy. I don't remember discussing it	12:53:56	22	Q. Did you ask anybody about that when	12:56:27
23	substantively.	12:53:58	23	you noticed it?	12:56:31
24	Q. And how were you aware of the	12:53:59	24	A. Not that I recall.	12:56:32
25	existence of that strategy?	12:54:00	25	Q. Were you -- prior to the time you	12:56:37
93			95		
1	A. I don't remember if that's something	12:54:02	1	became aware of the allocation to Madoff you've just	12:56:39
2	I heard from my father in a pre-Gabriel discussion,	12:54:03	2	described, did you have an understanding as to where	12:56:43
3	or something I heard at Gabriel.	12:54:07	3	Ariel and Gabriel's assets were invested?	12:56:47
4	Q. Did you discuss Madoff with your	12:54:09	4	A. Do you mean prior to my learning that	12:56:50
5	father from time to time?	12:54:13	5	Mr. Madoff was responsible for some of Gabriel and	12:56:53
6	A. I would guess over the years between	12:54:15	6	Ariel's investment, or --	12:56:57
7	the first conversation and December of 2008 there	12:54:18	7	Q. Yes.	12:56:59
8	might have been five, eight such conversations.	12:54:23	8	A. Well, the strategies that the funds	12:57:00
9	Q. Did you ever have a conversation with	12:54:27	9	were involved in changed over the years, but at the	12:57:03
10	anybody at Gabriel, or with your dad for that	12:54:29	10	outset of my employment by Gabriel Capital	12:57:07
11	matter, about why Madoff went into treasuries at the	12:54:33	11	Corporation the funds focused on merger arbitrage	12:57:11
12	end of each quarter?	12:54:40	12	and distressed investing. There came a time where	12:57:15
13	MR. STEINER: Objection to form.	12:54:42	13	merger arbitrage was de-emphasized and some of that	12:57:19
14	A. Not that I recall.	12:54:43	14	money moved, and for that matter, so was distressed	12:57:27
15	Q. Did you ever sort of ask yourself why	12:54:44	15	investing, some of that money moved into private	12:57:31
16	does he do this at the end of each quarter?	12:54:46	16	equity-type positions over the years and some of it	12:57:34
17	A. Unfortunately, I did not.	12:54:49	17	moved into an account with Madoff.	12:57:37
18	Q. I mean, did it ever strike you as odd	12:54:52	18	MR. COLOMBO: Excuse me. I have to	12:57:47
19	that he would do that, did you ever -- did it ever	12:54:55	19	read that.	12:58:16
20	strike you as odd that he would go into treasuries	12:55:00	20	Q. At the time -- okay. Continuing, at	12:58:20
21	at the end of each quarter?	12:55:05	21	the time when it came to your attention that some of	12:58:24
22	A. It did not.	12:55:07	22	the money was with Madoff, did you understand where	12:58:26
23	Q. And did anybody ever explain to you	12:55:09	23	the rest of the money was allocated?	12:58:28
24	or give you a reason why he would allegedly go into	12:55:12	24	A. Certainly not close percentages or	12:58:30
25	treasuries at the end of each quarter?	12:55:17	25	exact percentages, but a general idea of what the	12:58:33

128				130			
1	A.	Prior to December --	02:43:57	1	Gabriel dig in to the Bayou situation beyond what	02:46:52	
2	Q.	Yes, prior to December '08.	02:43:58	2	appeared in press accounts to find out what had gone	02:46:57	
3	A.	No, no.	02:44:02	3	on?	02:47:01	
4	Q.	And let me ask you just broadly, did	02:44:02	4	A. I don't recall doing so. I don't	02:47:01	
5		you ever hear from anyone in the whole wide world	02:44:05	5	know what others did.	02:47:03	
6		that Mr. Teicher had expressed a concern that Madoff	02:44:09	6	Q. Do you recall anybody ever reporting	02:47:04	
7		might be running a Ponzi scheme?	02:44:13	7	to you or reporting generally to people at Gabriel	02:47:08	
8	A.	Prior to December --	02:44:15	8	about the Bayou situation?	02:47:11	
9	Q.	Prior to December '08.	02:44:18	9	A. I don't recall that.	02:47:13	
10	A.	I have no such recollection.	02:44:21	10	Q. Do you recall any discussion at	02:47:14	
11	Q.	Here is an even broader question --	02:44:25	11	Gabriel about whether -- strike that.	02:47:22	
12		well, maybe not.	02:44:28	12	Was there any discussion that you're	02:47:40	
13		MR. STEINER: Objection.	02:44:30	13	aware of at Gabriel after the Bayou implosion of	02:47:42	
14	Q.	Did you ever hear of anyone at	02:44:40	14	changing any of the protocols for selecting	02:47:47	
15		Gabriel ever use the expression "Ponzi scheme" in	02:44:42	15	portfolio managers or monitoring investments or	02:48:05	
16		reference to Mr. Madoff prior to December 2008?	02:44:46	16	anything of that nature?	02:48:09	
17	A.	No, sir.	02:44:48	17	A. I don't recall any such discussion.	02:48:10	
18	Q.	Did you ever hear anyone at Gabriel	02:44:55	18	Q. Let me ask it more broadly then.	02:48:12	
19		raise any issue or concern of any nature about	02:44:57	19	After the Bayou implosion, was there ever any	02:48:15	
20		Mr. Madoff's operation prior to December 2008?	02:45:02	20	discussion of changing any of the policies and	02:48:18	
21	A.	Only in the very broadest sense where	02:45:06	21	procedures at Gabriel?	02:48:21	
22		Mr. Merkin once said to me, in what context I don't	02:45:09	22	MR. STEINER: Objection to form.	02:48:24	
23		recall, that the returns have been good, but that	02:45:12	23	A. I don't recall anything to that	02:48:26	
24		doesn't guarantee they will be in the future.	02:45:17	24	effect.	02:48:27	
25	Q.	Seems like something you read in most	02:45:19	25	Q. Did you ever have a discussion at --	02:48:43	

129				131			
1		quarterly reports. Okay. But that was the only	02:45:23	1	strike that.		
2		reference that you can recall of anybody saying	02:45:28	2	Were you aware of who Madoff's	02:48:51	
3		anything about Madoff and his operations?	02:45:30	3	accountant was prior to December of '08?	02:48:56	
4	A.	Well, saying about --	02:45:34	4	A. I'm not sure I was.	02:48:58	
5	Q.	That might be a concern?	02:45:36	5	Q. You don't have any recollection of	02:49:00	
6	A.	Correct.	02:45:37	6	any discussion at Gabriel about Friehling &	02:49:01	
7	Q.	Now, at some time when you were at	02:45:47	7	Horowitz, Madoff's accountant, prior to December of	02:49:04	
8		Gabriel did you become aware of this whole Bayou	02:45:51	8	'08?	02:49:06	
9		Ponzi scheme situation?	02:45:56	9	A. Correct, I do not.	02:49:07	
10	A.	Yes.	02:45:58	10	MR. COLOMBO: Would you mark that as	02:49:54	
11	Q.	How did you become aware of that?	02:45:58	11	Exhibit 7, please.	02:49:55	
12	A.	I believe it appeared in press	02:46:02	12	(Exhibit Balsam-7, E-mail January 17,	02:49:58	
13		accounts and I'm sure I must have discussed it with	02:46:04	13	2007, Bates BS00156935-156936, marked for	02:50:00	
14		Mr. Merkin.	02:46:07	14	identification.)	02:50:00	
15	Q.	Do you recollect anything about any	02:46:14	15	Q. Okay, Mr. Balsam, I'm now handing you	02:50:00	
16		discussion of it you may have had with Mr. Merkin?	02:46:15	16	what we've marked as Exhibit 7. It appears to be an	02:50:03	
17	A.	If it appeared in a quarterly letter,	02:46:19	17	e-mail chain -- no, not an e-mail chain. An e-mail	02:50:07	
18		then we would have discussed it. I remember one of	02:46:24	18	from you to Mr. Merkin regarding a former senior	02:50:10	
19		the quarterly letters talked about another fund that	02:46:27	19	trader at a hedge fund, Millenium Partners, being	02:50:19	
20		had imploded, albeit through other means, called	02:46:31	20	sentenced to probation after being guilty of	02:50:23	
21		Amaranth, A-m-a-r-a-n-t-h. As to Bayou, if it	02:46:36	21	improper trading. Do you recollect seeing that?	02:50:26	
22		didn't appear in a quarterly letter, then I don't	02:46:42	22	A. Not the specific e-mail, but the	02:50:28	
23		have a specific recollection of when we might have	02:46:45	23	incident it describes.	02:50:30	
24		discussed it or what we might have said.	02:46:47	24	Q. Okay. What do you recollect about	02:50:31	
25	Q.	Did you or did anybody else at	02:46:49	25	the incident?	02:50:32	

132			134			
1	A.	That Millenium was under	02:50:33	1	Q. -- I need to keep qualifying. And	02:52:53
2		investigation for trades that it made in mutual	02:50:37	2	the answer is?	02:52:57
3		funds, I think the area was broadly called market	02:50:39	3	A. No.	02:53:00
4		timing, and we were aware of that going on, it was	02:50:42	4	Q. Did you know this individual Steven	02:53:07
5		in the press and that's what I remember about it.	02:50:48	5	Markovitz who this article Exhibit 7 refers to?	02:53:11
6	Q.	Do you remember why you might have	02:50:54	6	A. No.	02:53:16
7		sent this e-mail to Mr. Merkin?	02:50:56	7	Q. The article also refers to an ongoing	02:53:17
8	A.	Because we did business with	02:51:00	8	investigation involving certain other companies and	02:53:23
9		Millenium and I thought it would be of interest to	02:51:02	9	individuals. Did Gabriel have any relationship with	02:53:27
10		him.	02:51:06	10	any of those persons listed in the last three	02:53:31
11	Q.	What sort of business did you do with	02:51:06	11	paragraphs?	02:53:35
12		Millenium?	02:51:08	12	MR. STEINER: Objection to form.	02:53:35
13	A.	Gabriel Capital Corporation managed	02:51:09	13	A. I think Bear Stearns, I think we did	02:53:36
14		an account for Millenium.	02:51:12	14	work with Bear Stearns at some point.	02:53:39
15	Q.	You'll have to excuse my ignorance on	02:51:22	15	Q. How about any of those individuals?	02:53:42
16		this, but was Millenium a fund that Mr. Merkin had	02:51:24	16	A. I don't recognize any of those names.	02:53:45
17		any involvement with?	02:51:28	17	Q. Do you recall if you ever sent	02:54:00
18		MR. STEINER: Objection to form.	02:51:30	18	Mr. Merkin any articles dealing with the Bayou	02:54:04
19	A.	When you say any involvement, what do	02:51:31	19	situation that we discussed a few minutes ago?	02:54:08
20		you mean?	02:51:32	20	A. I don't recall whether I did, but	02:54:11
21	Q.	Let me restate it.	02:51:33	21	it's very possible that I did.	02:54:14
22		Other than Gabriel managing this fund	02:51:38	22	Q. And to be fair, it would also be	02:54:16
23		for Millenium --	02:51:40	23	possible that you sent him articles on other similar	02:54:23
24	A.	This account.	02:51:42	24	types of issues if you noticed them?	02:54:26
25	Q.	This account, did you have any	02:51:42	25	MR. STEINER: Objection to form.	02:54:28

133			135			
1		other -- did Mr. Merkin have any other involvement	02:51:44	1	A. I've sent Mr. Merkin any number of	02:54:30
2		in connection with Millenium?	02:51:48	2	articles over the years, and if it was related to	02:54:32
3	A.	I think he knows -- I know he knows	02:51:50	3	our industry and our business and might be relevant	02:54:35
4		the principal of Millenium. I don't know that there	02:51:52	4	to him, there is a decent chance that I would send	02:54:38
5		is any other involvement.	02:51:55	5	him something on that subject.	02:54:41
6	Q.	He doesn't have an ownership interest	02:51:56	6	Q. Did he ever send you articles?	02:54:42
7		in Millenium or anything of that nature?	02:51:58	7	A. Sure.	02:54:44
8	A.	To the best of my knowledge he did	02:52:00	8	Q. Do you remember any of them that he	02:54:45
9		not.	02:52:02	9	sent you?	02:54:46
10	Q.	Do you recall discussing this issue	02:52:02	10	A. The ones that stick out in my mind	02:54:48
11		with Mr. Merkin, the Millenium situation?	02:52:11	11	were related to the New York Yankees.	02:54:52
12	A.	I'm sure we talked about it. I don't	02:52:17	12	Q. Let's leave them aside. Any	02:54:54
13		remember what we said.	02:52:19	13	regarding business? Not that the Yankees aren't a	02:54:56
14	Q.	You said you thought it generally	02:52:21	14	business.	02:55:01
15		involved an issue of market timing. Did anybody	02:52:26	15	A. I'm sure there were. I don't, as I	02:55:01
16		ever express concerns that Mr. Madoff might be doing	02:52:31	16	sit here now, recall what they might have been	02:55:03
17		something inappropriate with respect to market	02:52:36	17	about.	02:55:07
18		timing?	02:52:38	18	Q. Might as well ask it. And as you sit	02:55:19
19	A.	Not to me.	02:52:39	19	here you have no recollection of him ever sending	02:55:23
20	Q.	Did you ever hear anyone mention	02:52:41	20	you an article about Madoff. Is that correct?	02:55:25
21		market timing with respect to Madoff?	02:52:46	21	A. That's correct.	02:55:27
22	A.	Prior to December 2008?	02:52:48	22	Q. And "him" being Mr. Merkin.	02:55:28
23	Q.	Yes, prior to December 2008.	02:52:49	23	A. Correct.	02:55:30
24		Sorry --	02:52:51	24	Q. Okay. Now we're going to talk for a	02:55:44
25	A.	No.	02:52:51	25	while about after December 2008, so all these	02:55:47

Exhibit 84

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

BERNARD L. MADOFF INVESTMENT Adv.Pro.No.
SECURITIES LLC, 08-01789 (BRL)

Debtor.

-----x

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,

Plaintiff, Adv.Pro.No.

09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

-----x

VIDEOTAPED DEPOSITION OF J. EZRA MERKIN,
as reported by Nancy C. Bendish, Certified Court
Reporter, RMR, CRR, and Notary Public of the
State of New York, at the offices of Baker
Hostetler, 45 Rockefeller Plaza, New York, New
York, on Tuesday, February 24, 2015, commencing
at 9:47 a.m.

Page 58	Page 60
<p>1 next line.</p> <p>2 A. Um-hum.</p> <p>3 Q. What is your understanding of the</p> <p>4 term "options arbitrage"?</p> <p>5 A. Well, substantially all of the</p> <p>6 assets of Ascot at that point were managed by</p> <p>7 the Madoff organization and Bernie Madoff</p> <p>8 specifically and they were engaging in what I</p> <p>9 would consider options arbitrage. Meaning</p> <p>10 arbitraging prices of -- the prices of options</p> <p>11 and the prices of the securities to which those</p> <p>12 options can be converted into or exercised into</p> <p>13 or assigned to. So that it's your arbitraging</p> <p>14 price relationships between underlying</p> <p>15 securities and options struck against those</p> <p>16 securities.</p> <p>17 Q. Okay. And then skip over</p> <p>18 Cerberus. It then says "managing partner" and</p> <p>19 it has your name.</p> <p>20 A. Um-hum.</p> <p>21 Q. Were you the managing partner --</p> <p>22 well, you've said Capital Group was just a term</p> <p>23 used. Of what organizations were you managing</p> <p>24 partner?</p> <p>25 A. One that comes to mind I'm pretty</p>	<p>1 A. I was involved in a group, with a</p> <p>2 group that bought 51 percent of the ownership of</p> <p>3 GMAC from General Motors Corporation a few years</p> <p>4 prior to that and had been nominated by the</p> <p>5 group and accepted by the chairman and president</p> <p>6 of General Motors to chair the board. In other</p> <p>7 words, our group was going to chair the board;</p> <p>8 we were not going to basically run the company.</p> <p>9 The CEO didn't change. The CEO at some point</p> <p>10 changed, but it didn't change when we bought the</p> <p>11 company right away. I don't know whether it</p> <p>12 changed by April of 2008. It might have. But</p> <p>13 that's how that came. And that was done</p> <p>14 together with Cerberus and Steve Feinberg.</p> <p>15 Q. That may answer my next question,</p> <p>16 which was is there a legal entity for that group</p> <p>17 that purchased GMAC?</p> <p>18 A. There surely is. I mean --</p> <p>19 Q. Yeah, I didn't think you did it on</p> <p>20 your own.</p> <p>21 A. Yes. What's the name of that?</p> <p>22 Q. Yes.</p> <p>23 A. You know what, I'm sure I will</p> <p>24 remember, I'm just drawing a blank at the</p> <p>25 moment. Unless that's Cerberus FIM. It might</p>
Page 59	Page 61
<p>1 sure was Gabriel Capital LP which was the</p> <p>2 domestic version of that. Almost all of our</p> <p>3 strategies had pairs of funds, meaning we did</p> <p>4 the same strategy domestically and offshore.</p> <p>5 The offshore limited partnerships generally --</p> <p>6 I'm sorry, the domestics are limited partners</p> <p>7 partnerships generally -- did I garble that too</p> <p>8 badly or did you get that? Okay. And the</p> <p>9 offshore entities are generally corporations.</p> <p>10 So you're a partner generally in a limited</p> <p>11 partnership, but not in an offshore corporation,</p> <p>12 be it shareholder, be some other legal form of</p> <p>13 ownership.</p> <p>14 Q. All right. Probably get into that</p> <p>15 a little bit more later.</p> <p>16 (Comments off the record.)</p> <p>17 Q. Let's turn to the next page if we</p> <p>18 could. The title of it is -- again, I'm just</p> <p>19 reading, it says "J. Ezra Merkin." And we've</p> <p>20 covered a couple of things already here. But I</p> <p>21 just wanted to ask you, it says at this time --</p> <p>22 this is April of 2008, were you the chairman of</p> <p>23 the board of GMAC?</p> <p>24 A. Yes.</p> <p>25 Q. How did you get that job?</p>	<p>1 be Cerberus FIM. That might have been used for</p> <p>2 Chrysler, I just don't remember.</p> <p>3 Q. Okay. And who were the members of</p> <p>4 that group, besides yourself?</p> <p>5 A. The members of what group?</p> <p>6 Q. The group that bought GMAC.</p> <p>7 A. A separate vehicle, a special</p> <p>8 purpose vehicle was formed for that purpose.</p> <p>9 And there may have been, within an overall</p> <p>10 rubric several, one dominant one, one or two</p> <p>11 smaller ones, and there's a large number of</p> <p>12 investors. The total investment that was made,</p> <p>13 the total consideration paid for half the</p> <p>14 business was something I believe either around</p> <p>15 or slightly in excess of \$7 billion.</p> <p>16 So it's a very long list and I'm</p> <p>17 sure I don't know it, or even close to it. But</p> <p>18 let me just say for the purposes of answering</p> <p>19 the question our funds were investors in that</p> <p>20 entity and therefore investors in the GMAC deal.</p> <p>21 Q. Did that group, given the size,</p> <p>22 have an executive committee?</p> <p>23 A. The group itself?</p> <p>24 Q. Yes.</p> <p>25 A. I don't remember any formal</p>

Page 110	Page 112
<p>1 Q. Well, I'm gonna ask you that but,</p> <p>2 yes, I think I understand.</p> <p>3 A. So we don't have to -- do you want</p> <p>4 me to address that now?</p> <p>5 Q. Yeah, what is your understanding</p> <p>6 of what the Ascot strategy was?</p> <p>7 MR. STEINER: And I'm going to</p> <p>8 interrupt both of you before the court reporter</p> <p>9 does, that you're getting too talking over each</p> <p>10 other. And so maybe I can't direct Mr. Sheehan,</p> <p>11 but I will tell you, you've got to let him</p> <p>12 finish before you start responding.</p> <p>13 MR. SHEEHAN: Did you get all</p> <p>14 that?</p> <p>15 THE REPORTER: I did.</p> <p>16 MR. SHEEHAN: She did. We're</p> <p>17 good.</p> <p>18 A. Question on the table is?</p> <p>19 Q. Now you got me confused here.</p> <p>20 There it is.</p> <p>21 Q. What is your understanding of what</p> <p>22 the Ascot strategy was?</p> <p>23 A. So for those parts of the Ascot</p> <p>24 portfolio over which Mr. Madoff had discretion,</p> <p>25 which were substantially all the assets for most</p>	<p>1 what that meant is we had limited risk and</p> <p>2 limited upside. We were selling off the upside</p> <p>3 above the strike at which the call was sold.</p> <p>4 And if you want to add in the premium that's</p> <p>5 collected, right, so if we sold the call at 95</p> <p>6 and collected a dollar, the stock could go to a</p> <p>7 thousand, we stop making money at 96. We also</p> <p>8 stop losing money beneath 90.</p> <p>9 So, I would call that a hedged</p> <p>10 position, in a very natural way. I think that</p> <p>11 is a hedged position. When we're doing</p> <p>12 individual stocks we might have had, to pick a</p> <p>13 characteristic but not necessarily specific</p> <p>14 example, 30 of those at a time. 30 different</p> <p>15 stocks with puts and calls. Long the stock,</p> <p>16 long the put and short the calls.</p> <p>17 So I would say it was a portfolio,</p> <p>18 a basket of hedged positions, fully hedged</p> <p>19 positions. Doesn't mean riskless, means hedged.</p> <p>20 Q. Um-hum, okay.</p> <p>21 A. Those evolved over time to</p> <p>22 something from which they emanated and there's a</p> <p>23 resemblance, but it's a different thing. The 35</p> <p>24 grew to probably over 50 positions. But instead</p> <p>25 of having the individual puts, going back to my</p>
Page 111	Page 113
<p>1 of the period but not always all of them, so</p> <p>2 that's now what I mean by Ascot. Now I'm just</p> <p>3 addressing the Madoff strategy. They're not the</p> <p>4 same things always.</p> <p>5 Originally we were long a stock,</p> <p>6 I'm gonna say IBM, long a put struck underneath</p> <p>7 the stock, and short a call struck over the</p> <p>8 stock. So that if IBM traded at, take an</p> <p>9 example we've tossed around on other occasions,</p> <p>10 say at 92, we might be long 100 shares of the</p> <p>11 stock, short the equivalent -- at 92, short the</p> <p>12 equivalent in calls, the equivalent number of</p> <p>13 calls struck at 95, and we collected some money</p> <p>14 for being short those, right? And we bought a</p> <p>15 put at 90. And when we were doing individual</p> <p>16 stocks and options, which was only at the</p> <p>17 beginning, we were never partially hedged. In</p> <p>18 other words, you may know enough about options</p> <p>19 contracts to know that -- how the multipliers</p> <p>20 are, they're not the same as in stocks.</p> <p>21 Q. Um-hum.</p> <p>22 A. So we were long and short the</p> <p>23 correct amount of options. We weren't open, we</p> <p>24 weren't -- we didn't take an exposure anywhere.</p> <p>25 So, what that meant is from --</p>	<p>1 example IBM, we no longer had IBM puts and were</p> <p>2 no longer short IBM calls. We had 50 stocks,</p> <p>3 50-ish stocks in the S & P 100 and were long</p> <p>4 puts on the S & P 100 and short calls on the</p> <p>5 S & P 100.</p> <p>6 So that the relationship that</p> <p>7 existed is we had -- we were always long puts,</p> <p>8 always short calls and for the, for the long,</p> <p>9 instead of the stock we had a basket of stocks,</p> <p>10 all of whom were in the S & P 100.</p> <p>11 So I would consider that a fully</p> <p>12 hedged position. Not riskless; fully hedged.</p> <p>13 Q. This is a little out of the area</p> <p>14 but I've got to ask it.</p> <p>15 A. Sure.</p> <p>16 Q. In your entire experience with</p> <p>17 Ascot, did anybody ever exercise the call?</p> <p>18 A. Exercise the call. Well, we were</p> <p>19 short -- were we ever -- I don't remember. I</p> <p>20 just have to differentiate the answer.</p> <p>21 In the individual stock days, say</p> <p>22 the IBM example, it's just too long ago for me</p> <p>23 to remember.</p> <p>24 Q. All right.</p> <p>25 A. That's not to say no, but I just</p>

Page 114	Page 116
<p>1 don't remember.</p> <p>2 In the basket days -- remember</p> <p>3 you're getting -- you've sold the call on the</p> <p>4 S & P 100, on an index that -- let's just --</p> <p>5 that's called the OEX. The process of</p> <p>6 exercising index options is very different than</p> <p>7 the process of exercising individual stock</p> <p>8 options. And as a generality we either rolled</p> <p>9 or got out and were not ever exercised against</p> <p>10 or assigned, which is what I think you're asking</p> <p>11 me.</p> <p>12 You're asking me about a short</p> <p>13 call. We were short the call. So the person</p> <p>14 who bought the call or the party that bought the</p> <p>15 call could have exercised it, which is your</p> <p>16 question.</p> <p>17 Q. Right.</p> <p>18 A. I just don't remember. But</p> <p>19 generally we rolled around things. Rolled as a</p> <p>20 term of art. I'm not describing a physical</p> <p>21 movement.</p> <p>22 Q. On the other side, your</p> <p>23 recollection again in Ascot, did anyone ever --</p> <p>24 A. So, we were long the puts. So</p> <p>25 it's only the entity that's long the option that</p>	<p>1 about not buying puts. Do you remember the</p> <p>2 first time you had that conversation?</p> <p>3 MR. STEINER: Not buying puts or</p> <p>4 about buying puts?</p> <p>5 MR. SHEEHAN: No, no.</p> <p>6 Q. Yeah, not buying puts.</p> <p>7 A. The question I answered was did</p> <p>8 you ever have a conversation with Mr. Madoff</p> <p>9 about buying puts.</p> <p>10 Q. Yes.</p> <p>11 A. Okay. And the answer to that is</p> <p>12 yes. Okay?</p> <p>13 Q. I thought I said not buying puts,</p> <p>14 but go ahead.</p> <p>15 A. The presence of the puts, the cost</p> <p>16 of the puts, puts cost money, puts are</p> <p>17 insurance.</p> <p>18 Q. Yes.</p> <p>19 A. Essentially it's an insurance</p> <p>20 concept because by buying it, by adjusting the</p> <p>21 strike down, you're taking a deductible. And</p> <p>22 insurance policies decline in cost as the</p> <p>23 deductible increases.</p> <p>24 So we had quite a number of</p> <p>25 conversations about where the puts should be</p>
Page 115	Page 117
<p>1 can exercise.</p> <p>2 Q. Right.</p> <p>3 A. So if it's anyone -- did anyone</p> <p>4 ever exercise is a different question.</p> <p>5 Q. Right.</p> <p>6 A. Because the only person that can</p> <p>7 exercise the put is us.</p> <p>8 Q. Yes.</p> <p>9 A. Is the owner of the put.</p> <p>10 Q. Did you ever do that?</p> <p>11 A. Don't remember.</p> <p>12 Q. Did there ever come a time when</p> <p>13 you discussed with Mr. Madoff why are we buying</p> <p>14 puts?</p> <p>15 A. Sure. All the time.</p> <p>16 Q. And what was that conversation?</p> <p>17 We didn't put the time on it and everything.</p> <p>18 We'll get back to the W's later. But just --</p> <p>19 A. We're gonna get back to the W's</p> <p>20 later?</p> <p>21 Q. The W's, who, what, where, when.</p> <p>22 A. Oh. I thought you were talking</p> <p>23 about a position. I didn't know what you meant.</p> <p>24 Q. I'm sorry. Let me be less glib</p> <p>25 here. I asked you if you had a conversation</p>	<p>1 struck, where does the band go, how out of the</p> <p>2 money should we strike the put in order</p> <p>3 simultaneously to change the performance of the</p> <p>4 deductible and either decrease the cost of it or</p> <p>5 increase the cost of it.</p> <p>6 The intention of the program all</p> <p>7 along was to be hedged. The hedge in the case</p> <p>8 of this program was achieved through the</p> <p>9 purchase of the put. Right?</p> <p>10 Q. I understand.</p> <p>11 A. The sell of the call helped</p> <p>12 finance the put and the sell of the call also</p> <p>13 did some other things, and certainly, certainly</p> <p>14 it limited the upside. But if you're long a</p> <p>15 call -- if you're long a stock and short a call,</p> <p>16 which is called the covered right in the options</p> <p>17 industry, you're partially hedged on the upside</p> <p>18 and you've reduced your cost, but you're not</p> <p>19 really hedged on the downside.</p> <p>20 Q. Yes.</p> <p>21 A. You will lose -- you won't lose</p> <p>22 the first movement down because your first loss</p> <p>23 will be covered to the extent that you pocketed</p> <p>24 something for the call. So if you bought a</p> <p>25 stock at 92 and you sold a 95 call at a dollar</p>

Page 146	Page 148
<p>1 A. No.</p> <p>2 Q. Why don't you take a look at it</p> <p>3 right now. It's going to take a little bit of</p> <p>4 time but I think it will be worthwhile, because</p> <p>5 we're going to refer to it.</p> <p>6 MR. STEINER: The one thing I</p> <p>7 noticed, the original interrogatory answers that</p> <p>8 these are supplementing would have had the</p> <p>9 questions that were being responded to and this</p> <p>10 just refers back to those questions.</p> <p>11 MR. SHEEHAN: Yes.</p> <p>12 MR. STEINER: So to the extent</p> <p>13 your questions embed in them references to 1,</p> <p>14 2 -- interrogatories 1, 2, 3, 7, 8, 9, 10, 11</p> <p>15 and 13, then perhaps we should make those</p> <p>16 available for the witness also. But to the</p> <p>17 extent your questions don't require that, you</p> <p>18 know, the answer is the answer.</p> <p>19 MR. SHEEHAN: I don't think it</p> <p>20 will, Neil, but if it comes up we'll certainly</p> <p>21 retrieve those.</p> <p>22 BY MR. SHEEHAN:</p> <p>23 Q. Directing your attention if I</p> <p>24 could to page 3, starting at the first full</p> <p>25 paragraph, and I'm going to just read to make</p>	<p>1 A. I do.</p> <p>2 Q. Do you know how your father knew</p> <p>3 Mr. Madoff, how he came to know him?</p> <p>4 A. I have a vague recollection that</p> <p>5 they met on matters that pertained to a friend</p> <p>6 in common of the two of them, who had a, some</p> <p>7 sort of a brokerage firm downtown that was what</p> <p>8 was called a member firm of the New York Stock</p> <p>9 Exchange, they were members of the New York</p> <p>10 Stock Exchange. Not a listed firm but a member</p> <p>11 firm.</p> <p>12 Q. Right.</p> <p>13 A. And this friend was a friend of</p> <p>14 theirs in common. And by this time it's</p> <p>15 possible, I just don't know for sure, when or as</p> <p>16 of when my father may have entrusted Mr. Madoff</p> <p>17 with capital to manage.</p> <p>18 Q. What do you know about that? That</p> <p>19 is, what do you know about the capital that your</p> <p>20 father gave to Madoff to manage?</p> <p>21 MR. STEINER: Objection to form.</p> <p>22 A. I don't know much at all.</p> <p>23 Q. Well, were you aware of how much</p> <p>24 he invested with Mr. Madoff?</p> <p>25 A. No.</p>
Page 147	Page 149
<p>1 sure we're in the same place. It says, "In</p> <p>2 addition, prior to investing with Mr. Madoff</p> <p>3 Mr. Merkin met with Mr. Madoff in Mr. Madoff's</p> <p>4 offices," et cetera. Do you see that paragraph?</p> <p>5 A. I do.</p> <p>6 Q. I want to ask you just a few</p> <p>7 questions about your relationship with</p> <p>8 Mr. Madoff.</p> <p>9 Do you recall when this meeting</p> <p>10 took place?</p> <p>11 A. This meeting would have taken</p> <p>12 place in the late '80s, I think, but I don't</p> <p>13 recall specifically when. This was -- this was</p> <p>14 just as we were beginning the due diligence</p> <p>15 process that we were doing with Mr. Madoff and</p> <p>16 that's roughly when that would have happened.</p> <p>17 Q. Okay. Had you met Mr. Madoff in</p> <p>18 any capacity prior to this?</p> <p>19 A. I don't think so.</p> <p>20 Q. In the immediately preceding</p> <p>21 paragraph, in fact right above the paragraph I</p> <p>22 just read from, it says that, in addition to</p> <p>23 other things, that your father, who was a</p> <p>24 successful businessman and investor, "I know</p> <p>25 Bernie, and he's okay." Do you see that?</p>	<p>1 Q. Do you know when he invested with</p> <p>2 Mr. Madoff?</p> <p>3 A. I don't know. I don't know. It</p> <p>4 may have been a number of years prior to this.</p> <p>5 If this is the late '80s, this might have been</p> <p>6 either directly or perhaps with friends, and I'm</p> <p>7 just not sure, he may have been an investor as</p> <p>8 much as a decade earlier or sometime in between</p> <p>9 and it may have been not under his name. So,</p> <p>10 that is he may have been an investor in an</p> <p>11 entity that was an investor of Mr. Madoff's. My</p> <p>12 first investment with Mr. Madoff was through</p> <p>13 something called 61M Associates, something like</p> <p>14 that.</p> <p>15 Q. Did you ever discuss with your</p> <p>16 father his investment experience with</p> <p>17 Mr. Madoff?</p> <p>18 A. My father was not a person of many</p> <p>19 words and my father was very sparing in praise</p> <p>20 and had a very constructive opinion of</p> <p>21 Mr. Madoff and his investing abilities.</p> <p>22 Q. That sounds, pardon me, like a</p> <p>23 conclusion. What I'm asking is whether or not</p> <p>24 you ever discussed the actual investment</p> <p>25 experience that your dad had with Mr. Madoff.</p>

Page 150	Page 152
<p>1 A. So when I said he was a person of 2 spare praise and few words, he spoke in 3 conclusions. So he would say I knew Bernie, I 4 know Bernie and Bernie's okay, or I know Bernie 5 and he's okay. That's what I mean. You 6 consider that is a conclusion, perhaps, but 7 that's what he said.</p> <p>8 Q. Is that the extent of the 9 conversation you and he had?</p> <p>10 A. At that particular time, that is 11 certainly the extent that I remember. This is 12 going back a while.</p> <p>13 Q. I understand.</p> <p>14 A. I don't remember -- I don't 15 remember specifics about what was bought or sold 16 or owned for that investment process.</p> <p>17 Q. Okay. Did there come a time after 18 that when you had any, any discussions with your 19 father about investing with Bernie Madoff?</p> <p>20 A. Well, my father died in 1999 and 21 so let's just say roughly ten years later, then 22 this period of time, so maybe '11, I don't know, 23 the late '80s versus the late '90s -- no, I do 24 know when my father passed away but I'm 25 saying -- so my father was 92 -- was not quite</p>	<p>1 Were you still with Gotham when you met with 2 Bernie?</p> <p>3 A. This would have been after 4 Gotham -- I don't remember. I don't remember 5 specifically, as I say, the first investment 6 was -- of mine, was at -- through 61M 7 Associates. 61M was a, call it an account or 8 call it an investment vehicle that was managed 9 out of the Scheuer family office, which had 10 possibly also migrated uptown but for many years 11 was at 61 Broadway, and then at the Empire State 12 Building.</p> <p>13 61M was an account that invested 14 money with the Madoff -- with Bernie Madoff, and 15 had a number of persons who had contributed to 16 61M for that purpose. And the person who ran 17 the Scheuer family office as an entirety and a 18 61 account was a gentleman named Leon Meyers.</p> <p>19 Q. How was it that you came to make 20 that investment in 61?</p> <p>21 A. Leon and I had developed a pattern 22 of, you know, sort of talking about managers we 23 liked or managers we thought were interesting. 24 I'm not sure that he was the first person -- 25 certainly among the very first, I don't know how</p>
Page 151	Page 153
<p>1 92 when he died, and I didn't have that many 2 further discussions that I remember with him on 3 that subject.</p> <p>4 Q. Okay. Let's go back to your 5 meeting, if I may, with Mr. Madoff.</p> <p>6 So, how was it that you came to 7 meet with him in the first place?</p> <p>8 A. I don't remember the circumstances 9 of the first meeting and I don't remember when 10 the first meeting was, exactly, and I have a 11 vague memory that I met Bernie downtown, meaning 12 he -- it may have been before he moved his 13 office uptown and I don't know when he moved his 14 office uptown. I have a vague memory that I met 15 him still when he was on Wall Street. I mean 16 that literally, that he had an office on a 17 street called Wall Street. I don't mean the 18 financial district.</p> <p>19 Q. I understand.</p> <p>20 A. It's in the financial district but 21 if there was there was one. This was the 22 beginning of our due diligence process and the 23 discussions that I remember more clearly are 24 already uptown at Third Avenue in the east 50s.</p> <p>25 Q. What were you doing at that time?</p>	<p>1 that dovetailed with my dad, but he was 2 certainly -- it was certainly -- that was 3 certainly the vehicle through which I first 4 invested, and that was just me. In other words, 5 or maybe it was the kids or something, but it 6 wasn't for the fund and it wasn't for any 7 additional limited partners.</p> <p>8 Q. Okay. I may not -- I don't think 9 I do remember this. Did you invest in 61 before 10 the meeting with Bernie or after?</p> <p>11 A. I invested in 61 I -- you know 12 what, I don't remember precisely. The answer is 13 about the same time. Ask me what took place 14 first and what took place second, I don't 15 remember.</p> <p>16 Q. All right.</p> <p>17 A. I think of both the investment 18 personally only and the meeting with Madoff, the 19 meetings with Madoff as part of the initial due 20 diligence that preceded any investments on the 21 part of the funds, and was sort of just the 22 beginning of the due diligence process.</p> <p>23 Q. So, again, returning to page 3, 24 the second line in that first full paragraph 25 says: Discuss Mr. Madoff's trading strategies</p>

Page 154	Page 156
<p>1 as well as Mr. Madoff's market making 2 activities. Let's take those one at a time. 3 What did you recall, what do you 4 recall discussing with Mr. Madoff about his 5 marketing strategies? 6 MS. ARCHER: Object to the form. 7 A. Either trading strategies or 8 market making? Which one did you -- 9 Q. Did I mess that up? I'm sorry. 10 Let me rephrase it, in light of the objection. 11 You note that you discussed with 12 Mr. Madoff trading strategies, right. It says 13 Mr. Madoff trading strategies. Can you tell me 14 what you discussed? 15 A. So you're asking about the trading 16 strategies. 17 Q. Yes, I am. 18 A. So the trading strategies were 19 what strategies did Mr. Madoff use to invest 20 money on behalf of persons who entrusted him 21 with capital. 22 Q. Right. 23 A. Which at that time would have 24 been, you know, the single stock put underneath 25 the stock and the call above the stock and not</p>	<p>1 which his customers included Charles Schwab and 2 Fidelity, I'm inadvertently repeating myself. 3 Q. Yes. 4 A. That's what he said at the time. 5 So he would have a very significant order flow 6 from, he always called them Charlie Schwabs, I 7 don't know if he was referring to the person 8 Charlie Schwab or that was just a nickname for 9 the company, and Fidelity. 10 Q. Down below, if you travel down the 11 rest of this paragraph, and I'm reading from the 12 third line from the next-to-last sentence. It 13 reads: "His firm was a very dominant market 14 maker with an extraordinary share of the trading 15 and certain NYES stocks, particularly heavy 16 traded large cap stocks." 17 A. Um-hum. 18 Q. Did that -- the fact that he did 19 that, did that have any influence in your 20 thinking of evaluating Mr. Madoff as to how that 21 might impact his trading strategies? 22 MR. STEINER: Objection to form. 23 Q. Do you understand my question? 24 A. Not exactly. 25 Q. Okay. In other words, why was it</p>
Page 155	Page 157
<p>1 the indices, and would have been perhaps, and 2 this is now guessing, maybe 30 names, maybe 3 less, maybe -- no, would have been less than 30 4 names actually at that time. And he was just 5 coming over toward the end of the period in 6 which he might want to do converts, but converts 7 had been things he had been trading, you know, 8 for a number of years prior to that. Converts 9 meaning convertible. Arbitrage meaning also a 10 strategy of long and short. Long and short 11 something that directly related to each other. 12 Q. And you also say Mr. Madoff's 13 market making activities. 14 A. Um-hum. 15 Q. What did you discuss with 16 Mr. Madoff about his market making activities? 17 A. Well, he referred to those market 18 making activities as his wholesale business in 19 which he was a wholesale broker for 20 institutional clients rather than, let's say, 21 individual clients. So they would be the 22 Fidelities and the Charles Schwabs in this 23 world. In fact, I think the next sentence, when 24 it says Mr. Madoff also explained that BLMIS 25 operated a significant wholesale business in</p>	<p>1 important, if you're investing with his trading 2 operation, why do you care about his market 3 making? 4 A. So, again, this goes to early due 5 diligence. 6 Q. Yup. 7 A. And what was involved in that 8 process, that long process. So, generally 9 establishing a reputation or examining a 10 reputation that has been established is part of 11 that due diligence process. This is as compared 12 with, say, to we talked before about GMAC. This 13 is a different due diligence process, where it's 14 not people coming over, you know, bond 15 indentures. 16 It was important to me that Madoff 17 had a sterling reputation. It was important to 18 me that he was heavily involved in the industry. 19 It certainly was of significance to me that he 20 became the chairman of NASDAQ and that his 21 brother was the governor of NASDAQ. And those 22 things were accomplished through, in part, their 23 dominant market share in the wholesale business. 24 That's what -- that's one of the things that 25 Madoff was known for.</p>

Page 166	Page 168
<p>1 charge you for that. The government still pays 2 you something. That may change, too, but that's 3 at the moment snapshot.</p> <p>4 So every now and then I would say, 5 Bernie, we're going to miss the market, you 6 know, if this market's got to catch a rally, 7 whatever, whatever. I learned over time that 8 his near term market timing sense was much 9 better than mine and that when he thought we 10 might catch a turn he was almost all the time 11 right and when we disagreed either about getting 12 in or getting out he was very often right.</p> <p>13 He emphasized, I don't remember 14 this specific to the first conversation at all, 15 what I'm about to say to you, but he emphasized 16 certainly over time and maybe even at the first 17 conversation that the elements of -- no, the 18 indicators and the algorithms that helped create 19 his trading program, what you quote in here 20 trading strategies and I mean the same by that, 21 so I'll just say trading strategies rather than 22 to introduce a new phrase.</p> <p>23 Q. Understood.</p> <p>24 A. Were very much computer assisted 25 in the sense that he spent a lot of money on</p>	<p>1 produced buys, presumably. I mean, I'm 2 simplifying a little bit, but I'm not even so 3 sure I'm simplifying all that much.</p> <p>4 Q. I understand.</p> <p>5 A. So one of the important things to 6 me about Madoff, and this stayed the way 7 throughout time, is there are, there are money 8 managers who have had superb records over very 9 long periods of time. Very, very low 10 volatility, two and three times Bernie's 11 absolute returns, from whom you simply get a 12 number at the end of the month, this is what we 13 did this month. Then they don't tell you what 14 the positions are, they certainly don't give you 15 confirmations, don't give you copies of the 16 tickets. And you literally get a telephone 17 number -- you either get a number off the 18 telephone, in the old days maybe you got a fax, 19 but that's all you saw.</p> <p>20 In Bernie's case you had complete 21 transparency over the trading strategy. That 22 is, there was not a trade that he did that you 23 didn't get your confirmation of. And you 24 certainly got monthlies. So that -- and we put 25 these up -- we posted these every day, to the</p>
Page 167	Page 169
<p>1 software that would help get a sense of market 2 movements from the order flow in the wholesale 3 business. That's very different to my mind than 4 what you call skimming, and certainly to 5 front-running and, importantly as to your last 6 question, that his gut feeling about which way 7 the market was going to go controlled those 8 signals from his programs and rather than the 9 other way around.</p> <p>10 In other words, it was a very very 11 sophisticated system that was subject to his, if 12 you want to put it somewhat, perhaps too 13 colloquially, his gut check.</p> <p>14 Q. As part of your -- this 15 interrogatory answer we're looking at, as part 16 of your due diligence, as I understand it, did 17 you as part of your due diligence ask for any 18 insight or transparency into the algorithm that 19 gave him the ability to have -- to time the 20 market?</p> <p>21 A. The ultimate expression of the 22 algorithm, ultimate expression of the algorithm, 23 is the tickets.</p> <p>24 Q. Right.</p> <p>25 A. In other words, the algorithm</p>	<p>1 extent there was a trade every day, and there 2 certainly wasn't, but we had an annual daily 3 report that showed us when we were in what the 4 positions were, where the bands were struck, how 5 the puts and the calls were doing, and we marked 6 the P & L to market every night. That was on my 7 desk by, I don't know, quarter to five, five 8 o'clock in the afternoon. Market closes at 9 four. Sometimes they're earlier.</p> <p>10 So, we had transparency as to 11 every single trade and that was very significant 12 to me.</p> <p>13 Madoff's stature in the industry, 14 among customers on the wholesale business, 15 clients on the money management business, and 16 regulatorily speaking with NASDAQ and the SEC 17 was hugely important because he self-cleared. 18 In other words, at the end of the day it was 19 usually important because he's a -- these are 20 very important indices in any manager, but we 21 were getting tickets from him.</p> <p>22 Q. Did the market making operation 23 self-clear?</p> <p>24 A. The market making operation?</p> <p>25 Q. Right.</p>

Page 170	Page 172
<p>1 A. I was never a market making 2 customer. 3 Q. Do you know whether it 4 self-cleared? 5 A. So I don't know. 6 Q. You don't know. 7 A. Or if I knew, if I knew, I don't 8 remember. 9 Q. Well, when he told you he 10 self-cleared at the investment advisory end, was 11 that a red flag to you? 12 MR. STEINER: Objection to form. 13 MR. SIEV: Objection to form. 14 Q. They're objecting because I didn't 15 ask what a red flag is, so let's do that. 16 A. I'm sorry? 17 Q. They didn't like me using red 18 flag. So let me ask you this. 19 A. You just lost me for a second. 20 Q. I know. It's a lawyer thing, they 21 call it foundation, whatever. You know what I 22 was talking about but the record doesn't. In 23 any event -- 24 A. In the meantime you lost me, and 25 not them. You really lost me.</p>	<p>1 A. So you think a red flag means a 2 risk factor? 3 Q. Yes. 4 A. Okay, fine. 5 Q. All right. So, would you -- how 6 do you view self-clearing that, in terms of a 7 risk factor? 8 A. Normally speaking? Look, I had 9 accounts with persons who self -- with firms who 10 self-cleared for a long time. If you go back 11 long enough, many more people self-cleared until 12 clearing was made part of the industry. 13 So clearing, which relates a 14 little bit to who has custody, presuming the 15 clearing broker has custody, is one of the 16 attributes that we didn't speak about all that 17 much in terms of prime broker, but when earlier 18 you had asked me what a prime broker is and I 19 said there's many many -- there's several 20 different attributes to them, custody is also 21 something that a prime broker has. 22 Q. Right. 23 A. So, one might think of somebody 24 who is a custodian as a prime broker by virtue 25 of that alone.</p>
Page 171	Page 173
<p>1 Q. They're with me, they're having a 2 good time. 3 Anyway, the bottom line is this. 4 Do you know what a red flag is in terms of in 5 the investment advisory business, a red flag? 6 MR. SIEV: Objection to the form. 7 A. I'm not sure exactly what you 8 mean, but I take you to mean some sort of a 9 caution. 10 Q. Okay. Well, I don't want you to 11 take that from my question. I'm asking you 12 independently of me saying that, does the term 13 "red flag" mean anything to you? 14 A. Let me just be, perhaps, a little 15 bit clearer. I'm not sure whether by red flag 16 you mean something that would be an absolute 17 bar -- 18 Q. No. 19 A. -- or something that would be a 20 caution. That's what I was getting at. 21 Q. Let me rephrase it then. That's a 22 very good point. 23 Something that would expose 24 something as a risk factor that needed to be 25 examined.</p>	<p>1 Q. Right. 2 A. To this day, I sort of said this 3 earlier, if you have an account at Goldman 4 Sachs, the one I was referring to, this 5 hypothetical account this morning, you're gonna 6 clear at Goldman Sachs. If you have an account 7 at Merrill Lynch, you're going to clear at 8 Merrill Lynch. Merrill Lynch is not in the 9 business of giving the profitable clearing part 10 of their business away to Goldman Sachs, or vice 11 versa. I don't say that with encyclopedic 12 knowledge, but that's not the way the business 13 works. 14 In Mr. Madoff's case, it was very 15 clear, he made very clear that the accounts were 16 maintained at his shop and the confirmations and 17 the monthlies that you received were on his 18 letterhead. By letterhead I don't mean an 8-1/2 19 by 11 letter, but the tickets had his firm on 20 them. 21 That seemed to me to be a risk 22 factor to be weighed, but it was inconceivable 23 to me that somebody who had his prominence both 24 within the industry, to some extent his 25 legendary status in the industry, the sheer</p>

Page 174	Page 176
<p>1 volume of business he did on the wholesale side, 2 that was always of interest to me. 3 These Fidelity and Charles Schwab 4 orders are sought after. They are the staff of 5 life to people who handle their business. And 6 Madoff was, I spoke to somebody at Fidelity, 7 that's what I mean as a customer at this time, 8 and got back very positive review, all part of 9 the due diligence process. 10 I spoke to investors of his, 11 clients of his as distinct from customers. 12 Clients on the market-making side at that time, 13 who I think are some of the single most able 14 people I've met in the investment business, 15 still think so. I still think that about some 16 of these people. And, you know, they all had 17 very positive things to say. 18 Q. Do you know if Mr. Madoff paid for 19 order flow? 20 A. Pay for order flow was a subject 21 of his over a number of years. It subsided over 22 time. The whole -- I'm moving ahead in time 23 frame, so if that's not where you want to go -- 24 Q. At the time you're doing your due 25 diligence here?</p>	<p>1 A. Um-hum. 2 Q. Does Merrill Lynch clear trades? 3 A. Does Merrill Lynch clear some 4 trades? 5 Q. Yes. 6 A. I would imagine so. 7 Q. Do you have any knowledge that 8 they clear trades? 9 A. I believe they do. 10 Q. And they were cleared -- do you 11 know what the term "introducing broker" means? 12 A. Not very precisely, no. 13 Q. Do you know if introducing broker 14 clears trades? 15 A. I don't know -- the answer is I'm 16 not sure. 17 Q. When the person who clears the 18 trade -- like Merrill Lynch is clearing trades 19 for Madoff, let's assume that he was clearing 20 his trades through Merrill Lynch, right? 21 A. I don't think he did. 22 Q. No, no, but I'm asking you to 23 assume that he did. 24 A. Okay. 25 Q. You would know, would you not,</p>
Page 175	Page 177
<p>1 A. Initially. 2 Q. Yeah, initially. Did you know at 3 that time that perhaps one of the reasons he had 4 the clients he did is because he paid for order 5 flow? 6 A. I don't remember whether it came 7 up in the first meeting or two or not. I just 8 don't remember. 9 Q. Did you subsequently learn that he 10 paid for order flow? 11 A. I certainly know that payment for 12 flow was something that he said that he was open 13 to and did. I was not a wholesale customer, I 14 can't -- the way you worded the question, can I 15 confirm to you independently that he paid for 16 order flow, I cannot. I can only tell you what 17 he told me. 18 Q. When you talked to Fidelity did 19 you talk about paying for order flow? 20 A. Certainly not at that first 21 meeting. 22 Q. Did you ever talk to him about it? 23 A. Not that I recall. 24 Q. Let's go back to clearing broker 25 again.</p>	<p>1 that when you got a statement from Merrill Lynch 2 that they held a certain stock long that they 3 had that stock, would you not? 4 A. I just don't follow. You're 5 saying now that I got a, let's say a monthly 6 statement from Merrill Lynch that Bernard L. 7 Madoff had bought a hundred shares from me and 8 that was held at Merrill? 9 Q. Yes. 10 A. I just don't see the nexus to 11 Bernie. I'm missing something. 12 Q. If Bernie is using Merrill Lynch 13 to clear his trades. He's not clearing them 14 himself. 15 A. I would have known -- I would have 16 known -- had Bernie cleared our account at 17 Merrill Lynch, I would have had statements from 18 Merrill Lynch that would have reported that 19 information to me, yes. 20 Q. And would -- are there regulations 21 governing clearing brokers? 22 A. I would think yes. 23 Q. Are you familiar with them? 24 A. Not terribly well, no. 25 Q. When Bernie was clearing his own</p>

Page 178	Page 180
<p>1 trades and sending you a statement that he held</p> <p>2 a certain stock, did that mean he had the stock?</p> <p>3 A. If Bernie sent me a statement that</p> <p>4 said that we own on your behalf these shares?</p> <p>5 Q. Yes.</p> <p>6 A. Again, your behalf means the</p> <p>7 funds?</p> <p>8 Q. Right.</p> <p>9 A. So the customer was, say, Ascot,</p> <p>10 not Ezra Merkin.</p> <p>11 Q. Right.</p> <p>12 A. I did not have separately a</p> <p>13 managed account at Madoff's. My Madoff exposure</p> <p>14 was through the funds other than the 61M at the</p> <p>15 beginning.</p> <p>16 Q. Sorry, I'm speaking empirically</p> <p>17 and I shouldn't. So, if Epcot got a statement</p> <p>18 that said they held certain stocks and Bernie</p> <p>19 told you he had those, would you really know</p> <p>20 whether he had the stocks?</p> <p>21 A. Yes.</p> <p>22 Q. How would you know?</p> <p>23 A. He told me he had them.</p> <p>24 Q. Other than that, you had no</p> <p>25 information?</p>	<p>1 self-clear?</p> <p>2 A. Because it's expensive to</p> <p>3 self-clear unless you get to a certain critical</p> <p>4 mass of capital. That's why most people -- not</p> <p>5 most. Many people have moved out of the</p> <p>6 self-clearing business and because there are</p> <p>7 clear significant economies of scale in</p> <p>8 self-clearing and you can clear less expensively</p> <p>9 per trade for a very large group of customers</p> <p>10 than an individual customer may be able to do</p> <p>11 for himself.</p> <p>12 Q. Is it not true that the risk</p> <p>13 factor for self-clearing is self-dealing?</p> <p>14 A. The risk factor for self-clearing</p> <p>15 I would say is -- this goes back to what we</p> <p>16 talked about a little bit before. One of the</p> <p>17 attributes of prime brokerage is custody and</p> <p>18 clearing. So, if the firm that has custody of a</p> <p>19 hundred shares goes under, right, you have risk.</p> <p>20 You're an unsecured creditor of that firm. So</p> <p>21 you care about the credit quality of the firm</p> <p>22 that owns your -- that holds your securities for</p> <p>23 you.</p> <p>24 Q. Right.</p> <p>25 A. This was a huge issue in '08 when</p>
Page 179	Page 181
<p>1 A. I'm not sure what you're asking</p> <p>2 me. How is it different than Merrill Lynch</p> <p>3 telling me it has them?</p> <p>4 Q. Because it isn't Merrill Lynch</p> <p>5 controlled as a clearing broker as to what it</p> <p>6 has to do.</p> <p>7 A. I'm sorry?</p> <p>8 Q. As a clearing broker, does it not</p> <p>9 have to hold the stock that it's clearing for</p> <p>10 someone else?</p> <p>11 A. If Bernie self-cleared and we got</p> <p>12 a statement from Bernie that said we own this</p> <p>13 hundred shares -- I don't remember your example</p> <p>14 anymore -- and we had a statement from Merrill</p> <p>15 that said we owed -- we own, pardon me, the same</p> <p>16 hundred shares, let's just say we like the</p> <p>17 investment and we've given Merrill an order to</p> <p>18 buy a hundred shares of one of the stocks in the</p> <p>19 basket. And we have both of those monthly</p> <p>20 statements in front of us at the end of the</p> <p>21 month or in the beginning of the new month.</p> <p>22 Why -- what -- why would I see those two</p> <p>23 statements as being any different as to the</p> <p>24 ownership of those shares?</p> <p>25 Q. Well then why doesn't everybody</p>	<p>1 there was systemic risk everywhere, people</p> <p>2 worried about contra-party risk.</p> <p>3 Q. When you heard that Bernie</p> <p>4 self-cleared -- keep calling him that but we</p> <p>5 know who I'm talking about. Mr. Madoff</p> <p>6 self-cleared.</p> <p>7 A. Yeah, yeah, fine. You made that</p> <p>8 very clear from the beginning.</p> <p>9 Q. Did you do a credit analysis of</p> <p>10 Madoff's organization to give you comfort with</p> <p>11 regard to that?</p> <p>12 MR. STEINER: Objection to form.</p> <p>13 A. I think we looked into one or two</p> <p>14 things. I don't remember the specifics at the</p> <p>15 time, but whether it was then or later, but we</p> <p>16 tried to develop a sense of what his regulatory</p> <p>17 capital was in his business.</p> <p>18 Q. And what does that mean, tried to</p> <p>19 develop a sense of his regulatory capital?</p> <p>20 A. Asked them and tried to look at</p> <p>21 filings, you know, thereabout, as to that</p> <p>22 subject.</p> <p>23 Q. Did you ever ask to look at his</p> <p>24 focus reports?</p> <p>25 A. I don't remember.</p>

Page 182	Page 184
<p>1 Q. Did you ever look at his focus 2 reports?</p> <p>3 A. I don't remember. Certainly 4 discussed his focus reports. I'm not sure I 5 discussed the focus reports with him with them, 6 with the focus reports, or just discussed them 7 with him without the focus reports.</p> <p>8 Q. Did it surprise you to learn that 9 his focus reports never reported the IA 10 business?</p> <p>11 MR. STEINER: Objection to form.</p> <p>12 A. I don't know. I don't know 13 whether I knew that or not. I can't remember 14 whether I knew that or not. I think he 15 discussed them -- there's one conversation I 16 have in the back of my mind which was not then 17 which would -- which would not necessarily make 18 that a surprise. I just truly don't remember.</p> <p>19 Q. My colleague points out that you 20 keep using the term "we." I wasn't picking up 21 on that. When you say "we" with regard to this, 22 Mr. Merkin, did anybody assist you with regard 23 to this endeavor to do due diligence on Mr. 24 Madoff?</p> <p>25 A. Back there at the first meeting?</p>	<p>1 company then. It might have not had that name.</p> <p>2 Q. Maybe it was Ariel Capital Corp.?</p> <p>3 A. Might have been Ariel Capital 4 Corp.</p> <p>5 Q. My question is just that. I'm not 6 talking about other people who were investors 7 you may have talked to and other things. My 8 question when I said "we," is there anyone else 9 within your organization, like Mike Autera, who 10 did due diligence with regard to the investments 11 in Mr. Madoff?</p> <p>12 MR. STEINER: Object to the form.</p> <p>13 A. By Mike I mean Mike Autera. Mike 14 came with me to the office, to the Madoff 15 office, bringing investors to the Madoff office 16 and listening to their questions and his 17 answers, big part of the due diligence process.</p> <p>18 Q. I understand that and I appreciate 19 that testimony. My question very specific 20 was --</p> <p>21 A. You're saying not including that?</p> <p>22 Q. Yeah, not including any of them. 23 Who, if anyone, in your organization, whether it 24 was Ariel or Gabriel Capital Corp., did due 25 diligence with regard to BLMIS?</p>
Page 183	Page 185
<p>1 Q. Yeah.</p> <p>2 A. Probably at the first meeting it 3 was me, myself and Mr. Madoff. Subsequently, 4 certainly once we had made investments, Mike 5 Autera who runs my back office was on the phone 6 and participated in meetings at the Madoff 7 office and had his own phone calls with 8 certainly one of the persons in the Madoff 9 organization.</p> <p>10 And the overall due diligence 11 process goes far beyond, at least in my head, 12 goes far beyond me. The discussions with 13 investors over time, you know, the ongoing work 14 on the confirmations, the trips to his office 15 with investors, the visits there, their 16 questions of him, their questionnaires to us 17 about him, visits there in the office was part 18 of the due diligence process that makes "we" not 19 figurative, but it involves a number of 20 different people.</p> <p>21 Q. I understand that, but I was 22 talking specifically about your organization, 23 whether it's GCC, which didn't exist at that 24 point, as I understand it; is that correct?</p> <p>25 A. There was probably a management</p>	<p>1 A. The Madoff relationship in our 2 organization was heavily managed by Mike and me. 3 I'm not saying to the absolute exclusion of 4 everybody else, but it was basically Mike and 5 me.</p> <p>6 Q. Let's just go back just to that 7 last answer, the penultimate answer, actually. 8 That is, when you say you went to Mr. Madoff 9 with other investors and you talked to other 10 investors, did that -- well, let me start first 11 with the other investors. The other investors, 12 did they know anything more than you knew?</p> <p>13 A. From time to time, sure.</p> <p>14 Q. What did they know, they told you 15 that you didn't know from talking to Mr. Madoff?</p> <p>16 A. I think from time to time they had 17 insights into the process that I might have 18 learned of from them in the first instance.</p> <p>19 Q. Such as?</p> <p>20 A. Than from him.</p> <p>21 Q. Such as?</p> <p>22 A. I'm not sure. There's 23 something -- if you leave that question with me 24 I'll try to come up with something more 25 concrete.</p>

Page 186	Page 188
<p>1 Q. We'll come back to it. What I'm</p> <p>2 looking at is, by talking to others and by</p> <p>3 bringing people to talk to Madoff, was there</p> <p>4 anything different going on there than you just</p> <p>5 talking one on one with Madoff?</p> <p>6 MR. SIEV: Objection to the form.</p> <p>7 A. There might have been -- if you</p> <p>8 meet somebody for the first -- I talked to</p> <p>9 Bernie somewhere between 10 and 15 times a year.</p> <p>10 Spoke or met with him between 10 and 15 times a</p> <p>11 year for many years.</p> <p>12 Q. Right.</p> <p>13 A. I'm going to say roughly, very</p> <p>14 roughly once a month. It wasn't always every</p> <p>15 month and those 10 or 15 times were not</p> <p>16 separated by the same amount of time every</p> <p>17 week -- every conversation. But the importance</p> <p>18 of listening to Bernie present what he did to</p> <p>19 someone who met him for the first time is always</p> <p>20 helpful. Because you don't refer to things you</p> <p>21 talked about five years ago or seven years ago</p> <p>22 or last week, and it's not -- it's less</p> <p>23 conversational and it's an introduction to a</p> <p>24 fresh pair of eyes, a fresh pair of ears, a</p> <p>25 thinking head and a critical acumen, and that</p>	<p>1 had visited BLMIS's offices to conduct reviews</p> <p>2 eight times in 16 years, and that gave you</p> <p>3 additional comfort about Mr. Madoff's bona</p> <p>4 fides." Do you see that?</p> <p>5 A. I do.</p> <p>6 MR. STEINER: It wasn't exactly a</p> <p>7 correct reading, but close enough.</p> <p>8 MR. SHEEHAN: All right. I stand</p> <p>9 by the record, not by what I said, all right?</p> <p>10 Just suggesting a question.</p> <p>11 Q. But can you tell me what you</p> <p>12 discussed that gave you comfort?</p> <p>13 A. Unless I'm missing, it says -- the</p> <p>14 specific reference to the SEC reviews?</p> <p>15 Q. Yes. Did he tell you what they</p> <p>16 did?</p> <p>17 A. Oh. I thought you were saying</p> <p>18 something about the comfort.</p> <p>19 Q. No.</p> <p>20 A. He had either scheduled or</p> <p>21 surprise visits from the SEC with some</p> <p>22 regularity and some frequency, perhaps more on</p> <p>23 the regular than on the surprises. He was very</p> <p>24 proud of his overall compliance record and just</p> <p>25 sort of a clean bill of health with occasional</p>
Page 187	Page 189
<p>1 can be very, very, very additive.</p> <p>2 Q. You indicated -- I'm sorry, I'm</p> <p>3 moving around. I'm going to page 5 of this</p> <p>4 document, 354. Down in the last paragraph.</p> <p>5 A. Just one second.</p> <p>6 Q. Sure, take your time.</p> <p>7 A. Just trying to get there. Sorry.</p> <p>8 Q. It's a paragraph that starts,</p> <p>9 "Mr. Merkin also knew." And if you travel on</p> <p>10 down, you start -- you discuss the SEC. I want</p> <p>11 to be sure I don't miss something here. Sorry,</p> <p>12 I might have jumped over something.</p> <p>13 A. It's okay.</p> <p>14 Q. Boy, your memory place tricks</p> <p>15 here.</p> <p>16 A. Would you say that for the record,</p> <p>17 please.</p> <p>18 Q. I would readily admit it to the</p> <p>19 jury. Just ask Brian Williams.</p> <p>20 Let's go back to page 5 and the</p> <p>21 SEC.</p> <p>22 A. Last paragraph?</p> <p>23 Q. Yeah, last paragraph. I'm going</p> <p>24 to just read it. "In one of their many</p> <p>25 conversations, Mr. Madoff reported that the SEC</p>	<p>1 references to one or two smaller things, and it</p> <p>2 certainly meant a great deal to me that the SEC,</p> <p>3 with the power of subpoena, with the ability to</p> <p>4 spend days at the firm, which is how he</p> <p>5 presented it, came away and said, you know,</p> <p>6 thank God for Bernie. And that was very</p> <p>7 significant to me.</p> <p>8 Q. My question, though, was, maybe I</p> <p>9 wasn't clear so I'll restate it.</p> <p>10 Did he tell you what exactly the</p> <p>11 SEC did during these visits?</p> <p>12 A. Yeah. He -- his operation was</p> <p>13 reviewed by the SEC. It is my memory on the --</p> <p>14 on what I thought of as the two sort of aspects</p> <p>15 of the business.</p> <p>16 Q. What I'm asking you for is</p> <p>17 specifically, for example, did he tell you that</p> <p>18 they asked for access to DTCC to verify the fact</p> <p>19 that he had the stock he said he had?</p> <p>20 A. I don't remember that</p> <p>21 conversation.</p> <p>22 Q. Did he ever represent to you that</p> <p>23 that happened?</p> <p>24 A. I truly don't remember.</p> <p>25 Q. Okay. Page 6 if you would,</p>

Page 190	Page 192
<p>1 Mr. Merkin, I'm sorry. It's the last paragraph. 2 Why don't you read the whole thing because I'm 3 going to ask about this. 4 A. You want just that bottom 5 paragraph, right? 6 Q. Yes. "Another important part" it 7 starts. 8 A. Got it. 9 Okay. 10 Q. The first sentence states, I'm 11 just going to read it and I'll try to do a 12 better job this time: "Another part of 13 defendant's due diligence in monitoring of the 14 fund's investments was the annual audit of the 15 fund's financial statements conducted by BDO." 16 Can you explain to me how auditing 17 your own financial statements was due diligence 18 with regard to Mr. Madoff. 19 MR. STEINER: Objection to form. 20 Also separate from that, you left out the word 21 "important." 22 MR. SHEEHAN: I'm sorry. Such a 23 poor reader. My reading comprehension was never 24 good. 25 Q. But anyway, do you understand my</p>	<p>1 diligence. You want to make sure that there's 2 an auditor that's confirming the existence of 3 these trades, and you have an auditor saying 4 that these trades took place and that to the 5 extent that they satisfied themselves regarding 6 testing and whatever they needed to be 7 communicated to them regarding these trades from 8 the Madoff organization, they got. 9 Q. How -- I'm sorry. 10 A. So that's very, very important. 11 You have a third party who does this for a 12 living, who confirms the trades. The existence 13 of these trades. They got whatever they needed. 14 Whatever they asked for they got. They were not 15 told that they couldn't ask for anything else. 16 They were not told that they could only ask for 17 this. Part of that process included a review of 18 his auditor. They were accountants, they didn't 19 raise any issues about his auditor. So a very, 20 very important part of the whole process. 21 Q. Did -- 22 A. And in general if you're an 23 investor in funds, just to add so it isn't so 24 Madoff specific, you want to see an audit on a 25 fund. It's always part of the due diligence.</p>
Page 191	Page 193
<p>1 question or do you want it read back? 2 MR. STEINER: We'll stipulate. 3 MR. SHEEHAN: Thank you. 4 A. Let me make sure I understand the 5 question. Why was BDO's audit of our fund's 6 financial statements, right, part of my due 7 diligence? 8 Q. With regard to Mr. Madoff. 9 A. I'm not sure I understand your 10 question. 11 Q. Well, it says here that they 12 audited the funds, meaning your funds, financial 13 statements. How does that provide you an 14 insight into -- or provide you with due 15 diligence into what Mr. Madoff is doing? 16 A. Because of the following 17 sentences. BDO was given unfettered access to 18 GCC's employees and records, they reviewed and 19 tested trade confirmations and monthly 20 statements and were in direct contact with the 21 Madoff organization. That's how I read BLMIS, 22 as distinct from Madoff. Or perhaps in addition 23 to. Concerning the value of the fund's 24 investment. 25 It's a form of review and due</p>	<p>1 You'd much rather have an audited figure than an 2 unaudited figure. 3 Q. I understand that. But what I'm 4 asking you is how does looking at your trade 5 confirmations and the monthly statements you 6 received confirm the fact that he was actually 7 executing the trades? 8 A. Because they had to confirm the -- 9 they had to take whatever steps they needed 10 vis-à-vis the Madoff organization to confirm the 11 existence of those trades. 12 Q. And what did they do? 13 A. Whatever an accountant or an 14 auditor is supposed to do in the performance of 15 their function. 16 Q. Do you have any idea what they 17 did? 18 MR. STEINER: Objection to form. 19 A. In terms of the audit? 20 Q. Yes, in terms of the audit. 21 A. I have -- this is an issue that 22 has, where I really have to draw a distinction 23 between what I remember now -- what I remember 24 now of what I remember from then and what has 25 come up in the six-ish years since then, because</p>

Page 198	Page 200
<p>1 MR. STEINER: We don't even need 2 tomorrow. 3 MR. SHEEHAN: Barely scratched the 4 surface. Sorry, Mr. Merkin. 5 THE WITNESS: There's nothing to 6 apologize for. 7 BY MR. SHEEHAN: 8 Q. One question I should ask, 9 probably been asked of you many times, but were 10 there any documents exchanged at this meeting, 11 this initial meeting with Mr. Madoff? 12 A. Who remembers? Not me. 13 Q. Did you make any notes of the 14 meeting or anything like that? 15 A. I truly don't remember. 16 Q. Just had to ask. Could be these 17 golden notes hanging around if we don't ask, we 18 don't get it. That's how Neil is. 19 MR. STEINER: Must be some other 20 Neil. 21 MR. SHEEHAN: Yeah, exactly. 22 You're such a cupcake. Anyway. 23 BY MR. SHEEHAN: 24 Q. We talked about this a little bit 25 before, but I've never asked you one of these</p>	<p>1 basket to work with against the index as a 2 whole. And then I've got the options on top of 3 that. 4 Q. Time slicing, do you have an 5 understanding of that term? 6 A. Only very recently have I come 7 across an understanding of that. So as I sit 8 here today I think I'd probably know what it's 9 referring to, although it's not a phrase I think 10 I -- that's assuming that I'm correct, then I 11 have some idea of what it is. I could be wrong. 12 Q. Let's deal with what you know 13 right now and then we'll travel back in time. 14 A. We'll time slice. 15 Q. We're time slicing. 16 What do you understand -- 17 A. It may just be jargon for getting 18 out over a longer period of time than otherwise. 19 In which case I might just say getting out over 20 a longer period of time than otherwise, instead 21 of time slicing. 22 Q. Do you know if Mr. Madoff executed 23 trades using time slicing? 24 A. Did he do what? 25 Q. Executed trades using time</p>
Page 199	Page 201
<p>1 questions. 2 We talked about the fact that for 3 a while he was in a single stock with a collar 4 and then he went to an index strategy. Do you 5 know why he did that? Were you part of that 6 process in any way? 7 A. We certainly talked about it when 8 he did it and he certainly didn't do it without 9 asking first. 10 Q. Yes. 11 A. I think he thought that he had the 12 potential for capturing a relationship among 13 those three pieces. I remember one of those 14 pieces is multi-pieces. 15 Q. Right. 16 A. Meaning the only ex-put, the only 17 ex-call and the basket. So the move to the 18 basket was to give him the ability to catch, to 19 trap an arbitrage certain price relationships 20 that were more multiple, therefore more 21 sophisticated, therefore more subtle than 22 strictly the stock, the put and the call. 23 Because it was one dimensional in a way compared 24 to the two-dimensionality of I've got the 25 basket to work with against -- I've got the</p>	<p>1 slicing? 2 A. Using time slicing the way I just 3 said, getting out over a long period of time? 4 Q. Yes. 5 A. If it means what I think it means, 6 that he didn't get all in or all out in one 7 trade but might have done it in several trades 8 over several days, sort of multiple bites at the 9 apple rather than one chomp -- 10 Q. Yes. 11 A. -- then I would say yes. 12 Q. When he's buying in a particular 13 day, is he buying -- to your understanding of 14 watching his strategy and you say you did this 15 P & L and looked at the trades, right? 16 A. Yes. 17 Q. We'll get to that in a minute. 18 Did he execute or do the trades at one time 19 during the day or during the course of the day? 20 MR. STEINER: By the way, I assume 21 for all of this you're asking what Mr. Merkin 22 believed Mr. Madoff was doing at the time 23 because we all, because we all know now -- 24 MR. SHEEHAN: Oh, yeah, we all 25 know that nothing was happening. But the point</p>

Page 210	Page 212
<p>1 A. I remember the industry changing. 2 I don't remember when it was. 3 Q. Do you have an understanding of 4 the term "decimalization"? 5 A. As you used it now, I think you're 6 referring to quotation of stocks in decimals, 7 rather than in fractions. 8 Q. Right. In the old days they would 9 trade them in steenths, would you agree? 10 A. In the old old days, they'd trade 11 them in 30 seconds, but I think -- 12 Q. I'm not that old. 13 A. -- 30 seconds were reduced to 14 steenths. They were also called teenies. 15 Q. Yeah, exactly. To your knowledge, 16 to your knowledge, did the changeover to the 17 decimalization have an impact upon the market 18 making platform of Mr. Madoff? 19 A. I had conversations with 20 Mr. Madoff about the impact of decimalization. 21 I don't remember them very carefully as a topic. 22 I'm not sure it came about -- I'm not sure it 23 focused on the market making stuff. 24 The market making -- I just don't 25 remember. I don't remember such a conversation.</p>	<p>1 Q. Earlier today we were talking 2 about monitoring due diligence. My question is 3 did you ever do monitoring due diligence on 4 BLMIS, on behalf of any of your funds? 5 A. Yes. 6 Q. What did that monitoring due 7 diligence consist of? 8 A. Some of these things we have 9 talked about before the break and perhaps even 10 before then, but if one is approximately 10 or 11 15 conversations a year, conversations either in 12 person or on the phone, were meant to continue 13 to monitor and continue to perform due 14 diligence. 15 I just want to make sure he's 16 okay. Yes, he is. Are you okay? Okay, sorry. 17 I thought you had a problem. 18 Was a form of continuing due 19 diligence on the Madoff organization and the 20 organization of the Madoff function. That is, 21 we didn't just get on the boat, wave farewell 22 after we started investing. There were 23 numerous, numerous conversations. 24 Madoff's role in the affairs of 25 Yeshiva University was such that I was likely to</p>
Page 211	Page 213
<p>1 I remember conversations about decimalization, 2 but I don't remember something about the market 3 making. 4 Q. This may be drilling down too far, 5 but in any event, see if you would agree with 6 this statement. After decimalization, in order 7 to make money you had to act as an agent, not as 8 a principal, would you agree with that? 9 A. In what line of endeavor? 10 Q. In trading, market making of 11 stocks. 12 A. And before that as a principal? 13 Q. Yes. 14 A. Run it by me again, I'm sorry. 15 Q. Okay. Let me just drop it. I 16 think I'm going into an area that's just of 17 interest to me but probably doesn't mean much 18 anyway. 19 A. Okay. 20 THE VIDEOGRAPHER: Off the record, 21 3:18. 22 (Recess taken.) 23 THE VIDEOGRAPHER: We're back on, 24 3:40. 25 BY MR. SHEEHAN:</p>	<p>1 bump into him then a couple times a year for 2 that. And there was always or almost always an 3 opportunity to ask him something that I wasn't 4 sure about in terms of where the strategy -- 5 whether it had been executed properly or where 6 the strategy might be headed to next. 7 Madoff's continued and growing 8 success and prominence in the securities 9 industry was very significant. He did end up in 10 the position he achieved at NASDAQ, as its 11 chairman, and he went to Washington for hearings 12 for testimony. 13 I remember an occasion when he and 14 the president of the stock exchange and a former 15 chairman of the SEC were basically the three 16 persons who congressional committees wanted to 17 speak to. That all goes to various and 18 different forms of due diligence. 19 Continued to talk to investors, 20 continued to talk to investors of his not 21 through us, who I thought were thoughtful and 22 insightful investors, bringing investors to see 23 him was a big part of what we were after. 24 Various events that took place in 25 the securities industry mattered to me a great</p>

Page 214	Page 216
<p>1 deal. Not at the very beginning but closer to 2 then than the end the way an accounting firm 3 called Avellino & Bienes' pool was unwound by 4 the SEC's regional administrator in New York, 5 all the assets, or very substantially all the 6 assets to be managed at Madoff and with the very 7 clear reassurance from the SEC that every penny 8 was properly accounted for, was a very important 9 piece of information.</p> <p>10 It meant that the SEC, which had 11 every reason to look especially careful, 12 especially carefully at a fund that had been put 13 together that had clear legal issues, forcing 14 the liquefaction of the fund and putting the 15 fund out of business was basically saying we 16 found the fund to be managed by Madoff and we 17 were very, very happy to tell you that 18 everything is there.</p> <p>19 There was a quote from Richard 20 Walker who was then the regional administrator 21 in an article in the Wall Street Journal, and it 22 was very important. The development of 23 something called Primex, which was a trading 24 platform, that was to be managed by Madoff. 25 Madoff didn't really look for</p>	<p>1 securities industry.</p> <p>2 So you've got competitors who feel 3 that they partner with him, you've got customers 4 who are saying very nice things about him, and 5 you've got clients who are saying very nice 6 things about him. Plus the overall process of 7 the returns, the tickets, the confirmations, the 8 audits from Beidman, from BDO Seidman, are all 9 very, very critical.</p> <p>10 I would say high on, high on 11 certainly my list of things were redemptions. 12 When we wanted money back, I said, Bernie, I 13 need -- I'm just making up a number, I need \$60 14 million the next time we're in cash or at the 15 end of a quarter or at the end of the year. 16 Never a word. The monies always came back, they 17 always tied to the penny to what we had on our 18 last monthly statement so there was not a 19 discrepancy between what we got back and the 20 valuation of the account. So, in other words, 21 it netted correctly.</p> <p>22 I don't think Mr. Madoff ever 23 asked for more time. I don't think he ever 24 asked me to wait longer. He certainly never 25 asked me to raise money for him. Certainly</p>
Page 215	Page 217
<p>1 partners in trading platforms but at some point 2 Primex first started with I think two partners. 3 Might have been two of the following four: 4 Goldman, Solomon, Merrill and Morgan. Hard to 5 imagine a better or stronger quartet from the 6 street. They were the four horsemen, with all 7 acknowledgements to Grantland Rice, and not 8 people quick to put their name as a partner of 9 somebody in a Wall Street trading vehicle had 10 they not completed due diligence.</p> <p>11 If you want to do something and 12 joint venture with Goldman Sachs and you get 13 Goldman Sachs to put their name on your trading 14 platform, you've gone through a very, very 15 extensive vetting process and vetting is not 16 very different from due diligence in certain 17 phases of it. That was true about Goldman, that 18 was true about Morgan, that was true about 19 Merrill, that was true about Solomon.</p> <p>20 All these things happened 21 subsequent to the beginning and therefore sort 22 of fit in in terms of followup and managed due 23 diligence. That's all critically important in 24 terms of what happens to -- you know, what 25 happens to him and what his role is in the</p>	<p>1 never asked me to give him more money. And it 2 was certainly a lot easier to get money out than 3 it was to get money in.</p> <p>4 If -- I had suggested to him from 5 time to time that we would like to increase what 6 we were doing, either because Ascot was growing 7 or because the allocations were going to be run 8 a little differently, you would get push-back. 9 Sometimes the push-back would, you know, he 10 would relinquish and he'd give in and take the 11 money and sometimes he said you have to wait or 12 I'm not ready for it or my traders are not ready 13 for it. But he would -- it was always easier to 14 get money out than to put money in and that to 15 me is a very positive sign.</p> <p>16 The times of the redemptions, the 17 fact that they showed up on the day promised, in 18 the amount promised, everything reconciled, to 19 me is a very, very positive sign about the way a 20 man runs his business. So those were all parts 21 of the ongoing due diligence.</p> <p>22 Q. You I think mentioned this 23 earlier, Portfolio Management System, do you 24 remember? 25 A. Portfolio management?</p>

Page 230	Page 232
<p>1 with me?</p> <p>2 Q. Yes, I am.</p> <p>3 A. And then if you flip to the very</p> <p>4 last page, in principle what you'll see is the</p> <p>5 market value, the daily P & L, which in this</p> <p>6 particular case is either zero or not filled in,</p> <p>7 but if we were all in treasuries, the daily</p> <p>8 P & L would be either very little or quite</p> <p>9 possibly zero or, at least as a possibility, not</p> <p>10 filled in. But it wouldn't be extraordinary if</p> <p>11 you had a portfolio full of three-month</p> <p>12 treasuries that there was literally no P & L</p> <p>13 that day.</p> <p>14 Then there's the monthly P & L,</p> <p>15 which we previously discussed, the quarterly</p> <p>16 P & L and the annual P & L. The annual</p> <p>17 meaning -- not the annual. The year-to-date</p> <p>18 P & L.</p> <p>19 Q. I have another document I want to</p> <p>20 mark here but I want to ask this one question.</p> <p>21 When we see the treasuries, in fact they</p> <p>22 actually start on the -- they're actually</p> <p>23 throughout.</p> <p>24 A. Well, on the bottom of the --</p> <p>25 little bit at the bottom of the page 2, then</p>	<p>1 Q. Okay.</p> <p>2 A. So my guess is that November 29th,</p> <p>3 2002, that in 2002, November 29th was a last</p> <p>4 business day.</p> <p>5 Q. Right.</p> <p>6 A. Not a terrible hypothesis. It has</p> <p>7 a two out of -- well, I guess potentially one</p> <p>8 out of seven chance. But at any rate, what I'm</p> <p>9 saying is that it's a -- chances are actually</p> <p>10 high, but that's the last business day. This</p> <p>11 comes -- this is a very important piece of</p> <p>12 information to us and it's a perfectly good</p> <p>13 example of significant ongoing due diligence</p> <p>14 because what we're saying here is that our PMS,</p> <p>15 which created this value, agrees to their last</p> <p>16 monthly statement as to the terms of the total</p> <p>17 assets.</p> <p>18 Q. Okay.</p> <p>19 A. That's what I read this</p> <p>20 handwriting to say. And I can just tell you</p> <p>21 that that handwriting is not mine and I don't</p> <p>22 know whose it is. I don't recognize the</p> <p>23 handwriting.</p> <p>24 Q. And forgive my ignorance as I plow</p> <p>25 through this, but what I'm looking for four</p>
Page 231	Page 233
<p>1 they go to page 3. Then page 4 is just the</p> <p>2 summaries.</p> <p>3 Q. Right. Okay. Let me ask this</p> <p>4 question first.</p> <p>5 If we look on the last page, this</p> <p>6 one, and we look at the --</p> <p>7 A. The fourth page in the packet.</p> <p>8 Q. Thank you very much.</p> <p>9 Market value, see it has 484</p> <p>10 million? Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What does that represent?</p> <p>13 A. In all likelihood, without looking</p> <p>14 further, the market value of the existing</p> <p>15 positions that we have.</p> <p>16 Q. And where would you get that</p> <p>17 number from?</p> <p>18 A. What does that mean?</p> <p>19 Q. In other words, did Mr. Madoff</p> <p>20 tell you what the value of those T-bills was and</p> <p>21 you --</p> <p>22 A. This is our PMS again.</p> <p>23 Q. I understand.</p> <p>24 A. So we -- this looks like it was</p> <p>25 compared to a Madoff statement.</p>	<p>1 hundred --</p> <p>2 A. Mr. Sheehan, so we're on the same</p> <p>3 page. I'm on this page. Am I on the wrong</p> <p>4 page?</p> <p>5 Q. No, I'm on this page.</p> <p>6 A. Just want to make sure.</p> <p>7 Q. Says October something or other.</p> <p>8 A. It's 230 on the bottom right-hand</p> <p>9 corner? I just have this uneasy feeling --</p> <p>10 Q. 230. We're totally in sync here.</p> <p>11 A. Okay.</p> <p>12 Q. Okay. So, what I'm trying to --</p> <p>13 let me just state it plainly and then if I have</p> <p>14 to rephrase it, I will.</p> <p>15 Is the 484 million, I'm leaving</p> <p>16 out some of the other digits, is that a number</p> <p>17 that you arrived at independently from the</p> <p>18 materials given to you by Mr. Madoff? In other</p> <p>19 words, do you go into the market and say if he</p> <p>20 bought treasuries today, this is what he would</p> <p>21 have gotten?</p> <p>22 A. I believe that that is a number</p> <p>23 that we would have arrived at. We have put in</p> <p>24 prices.</p> <p>25 Q. Right.</p>

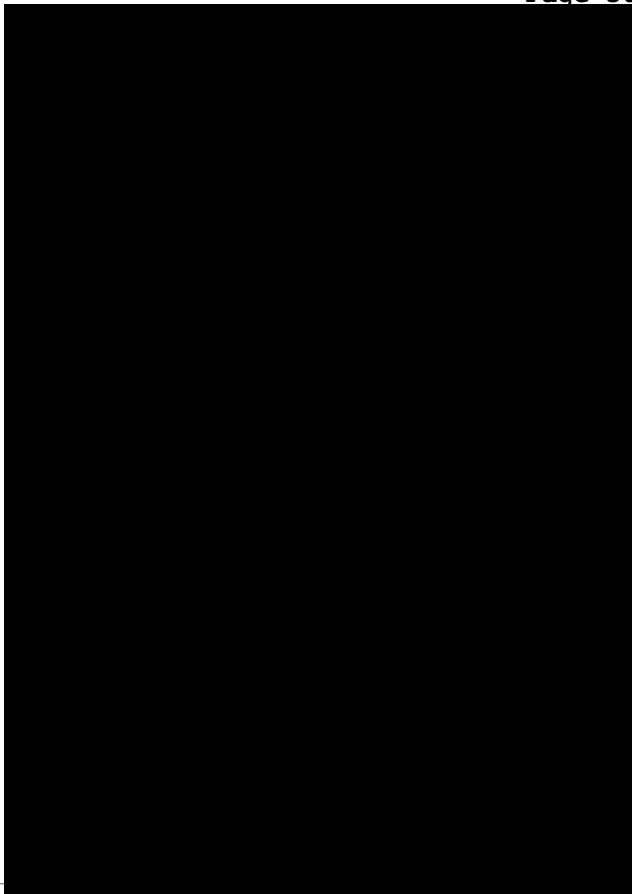
Page 234	Page 236
<p>1 A. For all these treasuries.</p> <p>2 Q. Yup.</p> <p>3 A. The individual treasury</p> <p>4 description, if I may use the word describe to</p> <p>5 mean description, and the amount we're getting</p> <p>6 from confirmations.</p> <p>7 Q. Okay.</p> <p>8 A. We are pricing these securities</p> <p>9 ourselves.</p> <p>10 Q. So you're marking them to market</p> <p>11 by going to where?</p> <p>12 A. I didn't mark these sheets and I</p> <p>13 didn't perform that function. But marking a</p> <p>14 three-month treasury is not a difficult</p> <p>15 undertaking.</p> <p>16 Q. I'm not suggesting it's rocket</p> <p>17 science.</p> <p>18 A. You can get it from any number of</p> <p>19 places and a -- three-month treasuries are</p> <p>20 marked very tight, .000 something. It's not any</p> <p>21 different than my saying to you to pick a stock</p> <p>22 on the front page. If you asked me to mark</p> <p>23 Coca-Cola, it isn't hard to mark Coca-Cola at</p> <p>24 the end of the day.</p> <p>25 Q. I understand that.</p>	<p>1 previously.</p> <p>2 So what this note is saying is --</p> <p>3 and I can just tell you, if you've ever added</p> <p>4 rows of columns, one of the things you start to</p> <p>5 do is put check marks in or if you ever checked</p> <p>6 and said --</p> <p>7 Q. Sure, of course.</p> <p>8 A. So we're saying this thing agrees</p> <p>9 in two ways. We're saying that the November</p> <p>10 29th, '02 value is the 484 plus that you</p> <p>11 previously read out loud, right?</p> <p>12 Q. Right.</p> <p>13 A. And we're saying that the 433</p> <p>14 number that you see --</p> <p>15 Q. I see it. It's net, looks like.</p> <p>16 A. I'd have to study this a little</p> <p>17 bit more, but there's a second agreement. If</p> <p>18 you take the difference between the 433 and the</p> <p>19 484, and you'll agree with me that that's</p> <p>20 roughly 51 million.</p> <p>21 Q. Yes.</p> <p>22 A. That's the 51 million you see in</p> <p>23 the right-hand corner box, I believe. I</p> <p>24 believe. I'm not sure.</p> <p>25 Q. Okay.</p>
Page 235	Page 237
<p>1 A. You get a pricing service, it's</p> <p>2 silly to speculate, my guess is we used Morgan</p> <p>3 Stanley pricing service because that sometimes</p> <p>4 also relates to when, if you have a prime</p> <p>5 brokerage, in addition to things we talked</p> <p>6 about, things like clearing and custodial and</p> <p>7 money in and money out.</p> <p>8 So we ran this past -- let's just</p> <p>9 assume that that's right because it just doesn't</p> <p>10 make that big a difference if it's wrong. Let's</p> <p>11 just assume it was done off of Morgan Stanley's</p> <p>12 pricing run.</p> <p>13 Q. Yeah, I'm good with that.</p> <p>14 A. So we then have to do a pretty</p> <p>15 significant adding function and say this is the</p> <p>16 total value of the account. That number is</p> <p>17 produced by us very possibly a day's antecedent</p> <p>18 to our receipt of the monthly statement, but</p> <p>19 certainly independent of it.</p> <p>20 Q. Okay.</p> <p>21 A. So the fact that it squares, the</p> <p>22 fact that we've done the comparison and this</p> <p>23 page 4, this page that ends 230.</p> <p>24 Q. Yup.</p> <p>25 A. The one that we discussed</p>	<p>1 A. Okay. So, there's also what we</p> <p>2 call a -- we are comparing and reconciling so it</p> <p>3 works that way as well.</p> <p>4 Q. Um-hum. I think one last</p> <p>5 question.</p> <p>6 A. Sure.</p> <p>7 Q. Is the -- say you were using the</p> <p>8 Morgan Stanley to check the prices?</p> <p>9 A. Pricing service, right. It's a</p> <p>10 computer run. They just give --</p> <p>11 Q. I understand. But is that</p> <p>12 reflected anywhere on the PMS?</p> <p>13 A. Is what reflected?</p> <p>14 Q. The price that they had to show</p> <p>15 it's the same.</p> <p>16 A. I'm sorry?</p> <p>17 Q. In other words, you're taking the</p> <p>18 prices from the confirmations and you're putting</p> <p>19 them on the PMS, right?</p> <p>20 MR. STEINER: Objection to form.</p> <p>21 Q. I thought that's what you said.</p> <p>22 A. I'm saying for starters we take</p> <p>23 the quantity of the security, the description</p> <p>24 and the cost that we -- that it cost us, that we</p> <p>25 bought it for.</p>

Page 238	Page 240
<p>1 Q. Right.</p> <p>2 A. That's our cost. There's nothing</p> <p>3 we can do about that.</p> <p>4 Q. Exactly.</p> <p>5 A. It's what's on the confirmation.</p> <p>6 Q. Right.</p> <p>7 A. We then price it and every single</p> <p>8 day and there's -- there either is or isn't a</p> <p>9 P & L that day. Most days there is. It's very</p> <p>10 rare that there's zero -- it's just too calm a</p> <p>11 scene if it's to have no movement. Then at the</p> <p>12 end of the month we are in a position to develop</p> <p>13 a monthly P & L.</p> <p>14 This looks like I'm hypothesizing</p> <p>15 is the following: Both a last day of the month</p> <p>16 and a period in time in which at the last day of</p> <p>17 the month we had -- we were not in, we were out.</p> <p>18 Q. Um-hum, I understand that.</p> <p>19 A. I'm not sure that that's true.</p> <p>20 I'm pretty sure it is true, in other words I'm</p> <p>21 not swearing it's true, but I think both of</p> <p>22 those things are likely to be true for me to</p> <p>23 make sense of this particular PMS.</p> <p>24 So therefore you just don't see a</p> <p>25 lot of P & L that day and since it's the last</p>	<p>1 identification.)</p> <p>2 Q. Mr. Merkin, I'm going to hand to</p> <p>3 you, let me rephrase that, Trustee Exhibit 359</p> <p>4 which has as its Bates numbers GCC-SEC 0040626</p> <p>5 and the last page is GCC-SEC 0040690.</p> <p>6 Now I'm handing it to you. Take a</p> <p>7 look at that.</p> <p>8 MR. SONG: This has been</p> <p>9 previously marked as Autera Exhibit 106.</p> <p>10 Q. Once you've had a chance to look</p> <p>11 at it, I want you to do the same thing for me</p> <p>12 that we did earlier, and that is to go across</p> <p>13 the top column. There seems to be some</p> <p>14 additional information here so I thought maybe</p> <p>15 you could help us by telling us again what's</p> <p>16 under each one of these. For example, I think</p> <p>17 we now have a market value in the daily P & L,</p> <p>18 which I don't think we had before.</p> <p>19 A. You picked an historic day.</p> <p>20 Q. Indeed.</p> <p>21 A. Do you know why?</p> <p>22 Q. It was --</p> <p>23 A. I wasn't trying to put you on --</p> <p>24 Q. No, well, I do know this is the</p> <p>25 last day for which the 11/30 statements probably</p>
Page 239	Page 241
<p>1 day of the month, you see attempts to reconcile</p> <p>2 it, compare -- well, compare, reconcile and</p> <p>3 agree.</p> <p>4 Q. So why are you comparing and</p> <p>5 reconciling?</p> <p>6 A. Because it's \$485 million, it's a</p> <p>7 lot of money and that's what we do as part of</p> <p>8 our daily due diligence.</p> <p>9 Q. And you would therefore go to a</p> <p>10 third party for comparison, like Morgan Stanley?</p> <p>11 A. For pricing.</p> <p>12 Q. For pricing.</p> <p>13 A. Right.</p> <p>14 Q. Right, okay. And would you do the</p> <p>15 same for stocks?</p> <p>16 A. Yes. You just happened to show me</p> <p>17 one that's --</p> <p>18 Q. Perfect segue, right here.</p> <p>19 A. We could do this on television</p> <p>20 together, we can do this, you know...</p> <p>21 Q. I think we'll just stick to this</p> <p>22 right here. I think I peaked.</p> <p>23 A. Is that in this stack or yet a</p> <p>24 different stack?</p> <p>25 (Exhibit Trustee 359 marked for</p>	<p>1 reflected.</p> <p>2 A. But it's also 11/30/08.</p> <p>3 Q. Right, I know. About eight days</p> <p>4 before the end date.</p> <p>5 A. Right. So it's certainly the last</p> <p>6 monthly statement that we produced.</p> <p>7 Q. Yes, correct.</p> <p>8 A. That we thought was 100,000</p> <p>9 percent bona fide and authentic.</p> <p>10 Q. Right.</p> <p>11 A. And wasn't.</p> <p>12 Q. Yes.</p> <p>13 A. Despite our 100,000 percent view.</p> <p>14 You know, after years and years</p> <p>15 and years of looking at these things every day</p> <p>16 and every month, it's just -- it's still amazing</p> <p>17 to think what happened. But it's an historic</p> <p>18 thing because it's the last monthly statement,</p> <p>19 that now means things in litigation and had</p> <p>20 no -- nothing to do with nothing.</p> <p>21 Q. Correct. And at a break I'll tell</p> <p>22 you an anecdote that fits right into that. But</p> <p>23 let's go back to the document which is 359.</p> <p>24 A. Mr. Sheehan, you are looking at</p> <p>25 something that I would call in portrait and I'm</p>

Page 254	Page 256
<p>1 Q. What do you understand a trading 2 authorization directive to be? 3 A. Okay. It's not -- is the prior 4 page part of this? Is that your sense of it? 5 Q. Not really, but it could -- I 6 think they're probably -- probably connected, 7 yeah, I would think so. 8 A. I'm trying to figure out what this 9 has to do, if anything -- it starts on October 10 22nd. Isn't that much earlier than the November 11 5th, the November 5th, to do things that 12 looks -- purport to do things that are very 13 Patriot Act related. 14 Q. Yup. 15 A. And maybe that's the next two 16 pages. 17 Q. Yup. 18 A. You'll notice by the unregistered 19 concept there. But I don't believe that what 20 starts -- at any rate, my sense of the trading 21 directive, which is the question I was trying -- 22 the question you asked and the question I'm 23 trying to answer, not sure has anything to do 24 with the Patriot Act or anything that precedes 25 it in this packet. I'm not sure.</p>	<p>1 this piece of paper and over the course of time, 2 the way you asked the question, yes, we had any 3 number of conversations over a sweep of years as 4 to the strategy, what it encompassed. 5 The simple move from individual 6 options to baskets makes the answer to your 7 question yes, because he certainly asked us 8 about it and we talked about it beforehand. 9 We often talked about when he was 10 gonna come in beforehand, not necessarily 11 always. You know, the overall catching of turns 12 and whether their strategy could be widened, 13 narrowed, broadened, heightened, sweetened, made 14 better, you know, the usual, the two twin 15 objectives, less risk and more reward. 16 So, yes, sure, we talked about the 17 trading strategy all the time. Not necessarily 18 in connection with this piece of paper. He and 19 I did not sit down and hammer out this piece of 20 paper together. 21 Q. When you received this piece of 22 paper -- let me rephrase that. 23 Is it your testimony then you had 24 nothing to do with the drafting of this 25 document?</p>
Page 255	Page 257
<p>1 Q. All right. Just to move it along, 2 and again Neil can point out if I leave a word 3 out, but I'll try not to. I'm going to read 4 that first paragraph. It reads: 5 "Bernard L. Madoff acting as the 6 undersigned's agent and attorney in fact has not 7 been granted, nor shall he exercise any 8 investment discretion as to the selection of 9 securities or other purchase or sold by or --" 10 did I leave it out? "-- or other property 11 purchased or sold by or for the undersigned 12 account, except with respect to the timing and 13 size of transactions and to the extent set forth 14 below. Purchase and sale of securities shall 15 further be limited to issuer --" 16 MR. STEINER: As to issuer. 17 Q. "-- as to issuer contract and in 18 quantity and shall include only executions that 19 are in accordance with the following 20 parameters." 21 A. Yes. 22 Q. With that in mind, did you and 23 Mr. Madoff sit down and decide what the 24 directives would be as to his trading strategy? 25 A. If you asked me independent of</p>	<p>1 A. As best as I remember today, I 2 don't think I had any -- I certainly didn't 3 draft it, I certainly didn't word it and 4 discussed it after -- discussed it with 5 Mr. Madoff after I received it. Meaning I 6 certainly did do the latter. I did discuss it 7 with him after I received it. 8 Q. Was it your understanding upon 9 reading this that Mr. Madoff would comply with 10 all of these directives as he managed the fund? 11 A. It was my understanding that he 12 would do so and that we had the prerogative of 13 changing it whenever we wanted. So that it 14 wasn't necessarily something that we were going 15 to be wedded to forever, nor was it presented as 16 a significant departure from what we -- what he 17 was heretofore doing for us. Maybe I should say 18 theretofore and not heretofore. 19 Q. There's one in particular I want 20 to ask about. It's one, two, three, four -- the 21 fourth bullet point. 22 A. Okay. 23 Q. Starting with the words "The 24 resulting portfolio." See that? 25 A. Yes.</p>

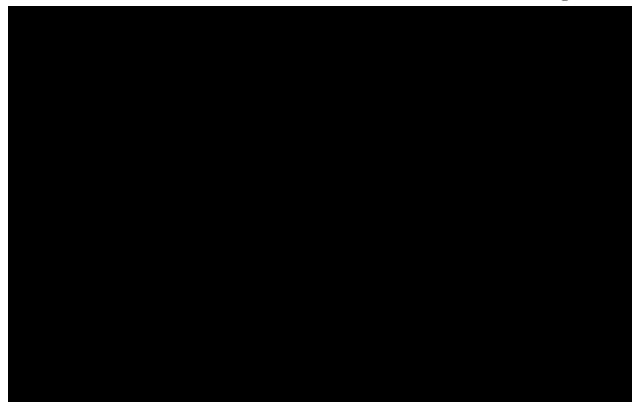
Page 306

Page 308

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 307

Page 309

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. I think I've told you that I don't remember the specifics today of any call --

Q. Right.

A. I'm sorry, of any issues or any subjects I discussed on that call. I observed that the quotes are not used only to reflect a direct quote, as you suggested, but can also be used to frame a paraphrase, or so the parenthetical suggests, about halfway in the middle of the page.

Q. Yup.

A. That is the editor's explanation of how he uses quotes. So, you know, I don't know what he quoted and I don't know what he

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

paraphrased.

I think -- let's put it this way, to the extent that I can make some sense of this -- I don't really -- if we discussed -- Madoff was, was, I don't think Madoff failed to answer too many questions certainly that I put to him.

Where he would say that's -- that that is a subject that he considers somewhat proprietary is what you called the algorithm. In other words, he wasn't that interested in training people -- he used to say, I'm not that interested in training people in Madoff. And by that he meant to say, in the algorithm. In other words, this is the thing that we do that we think is proprietary, it comes out of the totality of what we spend on the computer systems and the order flow and it lets us judge these turns. That was something that he would answer and consider proprietary.

So I'm just guessing -- doesn't even relate to this, so I don't know. I've spent five minutes looking at this document, I wouldn't put this at the top of the list of what he got wrong. I think the top of the list is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

crowded with other things that are just factually wrong. This one I think he either -- just assuming that he was on the same phone call. I don't know.

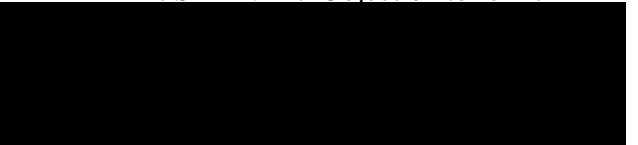
Q. Let me just offer that and move off the document for a minute.

You know, did you ever have a concern, from a scalability standpoint, of the ability of Merkin to -- Merkin -- Mr. Madoff to purchase options consistent with the strategy?

A. So purchase, you mean puts?

Q. Yeah, purchasing puts, or selling calls. One or the other that, since he had to do both theoretically under the split-strike, that the volume of those options on either side of the collar, whether that volume was available to him given the size of his investments?

MR. STEINER: Objection to form.



A. Mr. Madoff and I certainly discussed that over time and he certainly made clear that an ever evolving higher percentage of

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

BERNARD L. MADOFF INVESTMENT Adv.Pro.No.
SECURITIES LLC, 08-01789 (BRL)
Debtor.

-----x

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff, Adv.Pro.No.
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

-----x

CONTINUED VIDEOTAPED DEPOSITION OF
J. EZRA MERKIN, as reported by Nancy C. Bendish,
Certified Court Reporter, RMR, CRR, and Notary
Public of the State of New York, at the offices
of Baker Hostetler, 45 Rockefeller Plaza, New
York, New York, on Wednesday, February 25, 2015,
commencing at 9:42 a.m.

Page 378	Page 380
<p>1 Q. If you can find page 3127, Bates 2 number 3127. 3 A. 3127. 4 Q. Are you there? 5 A. Yes. 6 Q. Is document 3127, is that the 7 document you were referring to earlier that 8 Mr. Meyers gave to you? 9 A. May I just look elsewhere in this 10 same pack, part of the file? 11 Q. Absolutely. 12 A. This might just take me a minute. 13 So I'm just going to pull this out, okay. 14 I'm not sure. I have a distant 15 memory that there was something, on the sheet of 16 paper that I thought I remembered, that there 17 was a -- something, one or two words, in hand, 18 in handwriting. In handwritten. And this has 19 none. This could well be it because it's the 20 relevant time period. Well, is it? Yeah, it 21 looks like it's the relevant time period. 22 Q. Okay. 23 A. I don't know where I got this 24 from. This might have been it. It might be 25 something else in the file but I've looked at</p>	<p>1 Q. That is 354, yes. Back on page 2 2 of 354, the second name listed -- 3 A. One moment, one moment. Okay, 4 yes, I'm with you. 5 Q. The second name listed after Leon 6 Meyers was Sandra Manzke. Do you see that? 7 A. Yes. 8 Q. Who is Sandra Manzke? 9 A. Sandra Manzke is exactly what the 10 parenthetical reference to her identifies her as 11 being. She was a very senior person in the 12 Tremont organization and later started Maxam. 13 Q. Do you have a relation -- did you 14 have a relationship with Ms. Manzke in the late 15 '80s? 16 A. Yes. 17 Q. How would you describe that 18 relationship? 19 A. We were friendly, we would compare 20 notes occasionally on the investment world, on 21 managers and things like that. 22 Q. So in this time period being late 23 '80s, prior to 1990, do you know if Ms. Manzke 24 had a -- any relationship with BLMIS? 25 A. As I remember it today, I think</p>
Page 379	Page 381
<p>1 that and I'm not sure that's one or the other or 2 either. 3 Q. What's the other document that you 4 were looking at? 5 A. It's just another performance 6 thing, that's what I was looking at, 3106. But 7 it certainly would not have been at the time 8 that you were speaking of because it goes to 9 1996 and we're talking like 1990-ish, right? 10 Q. Yes. 11 A. But ish is not '96, is what I'm 12 trying to say. 13 Q. Yes, right. 14 A. So I guess I'm not sure. 15 Q. Put that back together and put it 16 aside for now. 17 A. Let me just put this rubber band 18 around it or else I'll never be... 19 There may be another one, I didn't 20 look at all of it, but those are the two that I 21 just looked at in answering your question. 22 Q. Okay. You should keep the 23 interrogatory response out. 24 A. You want that back? That's this, 25 right, that's 354?</p>	<p>1 she did. 2 Q. What do you recall that 3 relationship to be? 4 A. I think she had an -- she 5 supervised either a pooled vehicle there or a 6 series of accounts, and was proficient on the 7 subject and knew what she was talking about. 8 Q. Do you recall when you had those 9 discussions with -- let me back up. 10 When do you recall having 11 discussions with Ms. Manzke about BLMIS? 12 A. The specific dates? I don't 13 remember. Early that period of time, perhaps 14 very late '80s, perhaps not quite so late '80s, 15 perhaps '90, around that period of time. 16 Q. Do you know if you had more than 17 one conversation with Ms. Manzke? 18 A. Yes. I mean, yes I -- either in 19 person or on the phone? 20 Q. Yes. 21 A. Including those conversations, 22 yes. 23 Q. Do you have an estimate as to how 24 many times you spoke to her prior to investing 25 with BLMIS?</p>

Page 386	Page 388
<p>1 It was not quite at this time, but</p> <p>2 Mr. Gottesman's decision to have Mr. Madoff join</p> <p>3 the university board and become the chairman of</p> <p>4 their business school board, become at some</p> <p>5 point the treasurer of the university, a member</p> <p>6 of the executive committee, were later events,</p> <p>7 some of them not that much later because that</p> <p>8 takes place over a series of years, that I think</p> <p>9 reflected those views.</p> <p>10 Q. Did Mr. Gottesman ever share with</p> <p>11 you how much he invested in BLMIS?</p> <p>12 A. I don't remember.</p> <p>13 Q. Would the amount of money that</p> <p>14 Mr. Gottesman placed with BLMIS be of any</p> <p>15 significance to you?</p> <p>16 MS. ARCHER: Object to the form.</p> <p>17 A. I don't remember. At the time</p> <p>18 Mr. Gottesman had -- was a very, very, very</p> <p>19 significant investor in Berkshire Hathaway.</p> <p>20 It's possible that even then I was aware, or I</p> <p>21 believe is the case which is he was the largest</p> <p>22 single individual shareholder in Berkshire other</p> <p>23 than Mr. Buffett. They're institutional</p> <p>24 investors, but I think at some point I realized</p> <p>25 he had a larger -- perhaps was a larger investor</p>	<p>1 but not that much less well. He was a -- had</p> <p>2 been a figure at the Yeshiva University board.</p> <p>3 I'm not sure he was still on the board but he</p> <p>4 was the chairman of their investment committee</p> <p>5 at that time and I had, by then I'm pretty sure,</p> <p>6 joined the investment committee. I'm not sure I</p> <p>7 necessarily was then chairing it. Pardon me.</p> <p>8 Can't quite place the time sequence today.</p> <p>9 He ran Solomon Brothers' municipal</p> <p>10 department, municipals department which, when he</p> <p>11 ran it, until -- the department was closed, was</p> <p>12 sort of a huge firm within a firm. He was</p> <p>13 probably one of the leading spokesmen for the</p> <p>14 muni industry. The nature of the muni industry</p> <p>15 is such that government relations are very</p> <p>16 critical because municipals are debt securities</p> <p>17 issued by government entities, perhaps without</p> <p>18 exception. They don't qualify for their tax</p> <p>19 advantages.</p> <p>20 What I remember from a</p> <p>21 conversation with him, very specifically at that</p> <p>22 time, was the extent to which the regulatory</p> <p>23 world and the congressional world held</p> <p>24 Mr. Madoff in such high esteem. That would have</p> <p>25 been something that would have been important to</p>
Page 387	Page 389
<p>1 than anybody -- any other individual.</p> <p>2 So nothing -- he was never going</p> <p>3 to invest with some other person. Just for</p> <p>4 sheer size, of what he might have had with</p> <p>5 Berkshire and therefore what he had someplace</p> <p>6 else was not something that I necessarily asked</p> <p>7 about or remember hearing about or paid that</p> <p>8 much attention to. Unless it was trivial, but I</p> <p>9 don't have any memory that it was trivial.</p> <p>10 Q. What would be a trivial amount in</p> <p>11 your mind?</p> <p>12 A. Then?</p> <p>13 MR. STEINER: Objection to form.</p> <p>14 Q. Yes.</p> <p>15 A. I don't know.</p> <p>16 Q. The next name on the list is</p> <p>17 Mr. Gedale Horowitz.</p> <p>18 A. Um-hum.</p> <p>19 Q. Again, prior to 1990, did you have</p> <p>20 a relationship with Mr. Horowitz?</p> <p>21 A. Yes.</p> <p>22 Q. How would you describe that</p> <p>23 relationship?</p> <p>24 A. I knew him. I knew him probably a</p> <p>25 little bit less well than I knew Mr. Gottesman</p>	<p>1 me and he would have been a very critical figure</p> <p>2 in knowing, because he was constantly traveling</p> <p>3 among states, and specifically to Congress in</p> <p>4 Washington, on governmental relations, because</p> <p>5 they're so important to the muni industry, and</p> <p>6 because Solomon was such a dominant name in</p> <p>7 municipals. And he kept saying to me -- he was</p> <p>8 the person who said to me at that time, Bernie</p> <p>9 Madoff, a legend on Wall Street. He said, but</p> <p>10 you -- but possibly even more so, even more than</p> <p>11 a legend in Congress. Given Bernie's testifying</p> <p>12 down there and given the extent to which they</p> <p>13 had looked to him for certain issues in the</p> <p>14 securities industry.</p> <p>15 Q. Did you know whether or not</p> <p>16 Mr. Horowitz had a -- any kind of a personal</p> <p>17 relationship with Mr. Madoff at that point in</p> <p>18 time?</p> <p>19 A. I don't really remember today</p> <p>20 whether that was the case or not. I have very</p> <p>21 specific memories of their knowing each other</p> <p>22 subsequent to that time. In other words, I can</p> <p>23 tell you about things subsequent to that, but</p> <p>24 they did very clearly know each other, but I</p> <p>25 don't remember today whether I knew that then or</p>

Page 394	Page 396
<p>1 was a bit of discussion about SEC chairman but</p> <p>2 I'm not sure I -- that that is in front of me.</p> <p>3 That is what I remember their talking about.</p> <p>4 Q. Did you arrange the meeting</p> <p>5 between Mr. Horowitz and Mr. Madoff?</p> <p>6 A. I think so.</p> <p>7 Q. Do you know why you needed to</p> <p>8 arrange the meeting if Mr. Horowitz and</p> <p>9 Mr. Madoff had a personal relationship?</p> <p>10 A. I think Mr. Horowitz, as either a</p> <p>11 fiduciary for or as an investor in Ascot</p> <p>12 Partners LP, thought that that was the way to</p> <p>13 have the introduction, or have the request made.</p> <p>14 Q. And did you take any notes from</p> <p>15 this meeting?</p> <p>16 A. Again, I'm not sure I was at the</p> <p>17 meeting or this is my memory of what they told</p> <p>18 me about the meeting. They meaning mostly</p> <p>19 Gedale.</p> <p>20 Q. Other than this one meeting that</p> <p>21 we were discussing, do you recall any other</p> <p>22 occasions in which you arranged a meeting</p> <p>23 between Mr. Horowitz and Mr. Madoff?</p> <p>24 A. I don't remember if there was a</p> <p>25 request for another meeting, that didn't happen</p>	<p>1 list is Daniel Hoffert. Am I saying that right?</p> <p>2 A. Hoffert, I think.</p> <p>3 Q. Prior to -- again prior to 1990</p> <p>4 did you have a relationship with Mr. Hoffert?</p> <p>5 A. Yes.</p> <p>6 Q. And how would you describe that</p> <p>7 relationship?</p> <p>8 A. I knew Mr. Hoffert, he was</p> <p>9 probably older than I am, and he was someone I</p> <p>10 knew from our neighborhood and community in New</p> <p>11 York City when I was growing up. He no longer</p> <p>12 lived in New York City, probably even then, he</p> <p>13 lived in Florida.</p> <p>14 Q. Mr. Merkin, can I ask you not to</p> <p>15 put your hand to your mouth.</p> <p>16 A. Okay.</p> <p>17 Q. Did there come a time in which</p> <p>18 Mr. Hoffert became an investor with Gabriel?</p> <p>19 A. Yes. Or some family entity did.</p> <p>20 Q. And do you recall when you first</p> <p>21 met Mr. Hoffert to discuss BLMIS?</p> <p>22 A. I don't remember that, when we met</p> <p>23 to discuss it. I think he was already in</p> <p>24 Florida, called me and asked me one or two</p> <p>25 questions about Madoff. He said he had had -- I</p>
Page 395	Page 397
<p>1 or did happen. I mean, their paths might have</p> <p>2 crossed. There was a -- I think I mentioned</p> <p>3 there was some point Mr. Madoff became the</p> <p>4 chairman of the board of the Yeshiva</p> <p>5 University's business school and there was a</p> <p>6 fund raiser done at which the then president of</p> <p>7 the New York Stock Exchange was, I suppose you</p> <p>8 could say the guest of honor, I think Mr. Madoff</p> <p>9 was sort of the host, and I think Dale spoke at</p> <p>10 that meeting. Spoke meaning said a few words.</p> <p>11 Q. That was a meeting that you</p> <p>12 arranged, correct, sir?</p> <p>13 A. At that meeting there was</p> <p>14 discussion about -- that was not a meeting I</p> <p>15 arranged. That was a fund raiser for the</p> <p>16 school. But I think what I said I remembered</p> <p>17 from that meeting might also have come up at</p> <p>18 that occasion, and I may be conflating the</p> <p>19 meeting of the two of them together with this</p> <p>20 fund raiser, because there was a bit of</p> <p>21 discussion of that there as well. So I just</p> <p>22 want to identify and to some extent apologize</p> <p>23 for not -- my memory isn't strong enough to say</p> <p>24 it happened here or it happened there.</p> <p>25 Q. Understood. The next name on the</p>	<p>1 think I remember the conversation going</p> <p>2 something like as follows, because I told him</p> <p>3 that Gabriel Capital LP -- this is either around</p> <p>4 the time that he became an investor, or maybe it</p> <p>5 was earlier. We had discussed the merger</p> <p>6 arbitrage business and he said to me, you must</p> <p>7 know somebody else who's in the merger arbitrage</p> <p>8 business. That's not such an infrequent</p> <p>9 question. And I said, who'd you have in mind</p> <p>10 and he said, Bernie Madoff. And I said, I would</p> <p>11 not think of Bernie Madoff as someone who is in</p> <p>12 the merger arbitrage business. And he said, no,</p> <p>13 no, no, not merger arbitrage business.</p> <p>14 Arbitrage business. He's an arbitrager. "He"</p> <p>15 meaning Madoff, not Mr. Hoffert. And I thought</p> <p>16 in some sense that made some sense. And he sent</p> <p>17 me some form of either a confirmation or perhaps</p> <p>18 it was a monthly statement to give me some sense</p> <p>19 of why he called him an arbitrager and what he</p> <p>20 was doing with him.</p> <p>21 Q. I'm going you to go back to your</p> <p>22 Madoff file.</p> <p>23 A. To the rubber bands?</p> <p>24 Q. Yes. This will be relatively easy</p> <p>25 to find.</p>

Page 406	Page 408
<p>1 quite remember. It may have been prior to that 2 as well. It is surely the case that I read the 3 newspaper accounts about it, but that's not the 4 part I'm qualifying. I can't remember whether 5 with -- it came up with Leon or came up once in 6 a conversation, I'm just not sure. 7 Q. Okay. So sitting here today you 8 can't recall whether you had any conversations 9 with Mr. Levy regarding BLMIS? 10 A. Sitting here today, I think in all 11 likelihood, I didn't. But I'm not sure I can 12 swear that I didn't. I think the very strong 13 likelihood is that I didn't. 14 Q. Mr. Levy is not someone you would 15 include as a person in which you talked to in 16 your ongoing due diligence of Mr. Madoff? 17 A. Just to make sure, the Mr. Levy 18 you're talking about is -- 19 Q. Norman. 20 A. Norman. Yes, that is correct. 21 Q. Here's another name I'm 22 potentially going to butcher, but do you know 23 Mr. Edgar de Picciotto? 24 A. I think it's de Picciotto, but I 25 wouldn't swear to that, either. I know -- we</p>	<p>1 the UBP staff and senior people with whom I did 2 spend endless amounts of time due diligencing 3 Mr. Madoff occasionally made references to Mr. 4 de Picciotto being an investor, but didn't say 5 through them, independently, and it's also 6 broadly speaking supporting their investment. 7 Mr. de Picciotto by reputation I 8 think is one of the most gifted investors of his 9 generation. So there was a person that used to 10 go interview him periodically and literally 11 print all of his predictions, kind of, I think 12 used to refer to him as the smartest man he knew 13 or the smartest man in the west or something 14 like that. 15 And over a series of years 16 reading -- he's a very, very (indiscernible) 17 investor. And I just remember once thinking, 18 okay, this one he's really really going to get 19 wrong, and then a year or two later, he was 20 absolutely right. 21 Q. Did you ever attempt to speak to 22 Mr. de Picciotto regarding his investments with 23 BLMIS? 24 A. I think I might have. It was a 25 very brief snatch and didn't really leave a</p>
Page 407	Page 409
<p>1 had met once or twice. 2 Q. And did you ever speak to Mr. de 3 Picciotto regarding investments with BLMIS? 4 A. Directly with him? 5 Q. Yes. 6 A. Not that I recall. 7 Q. Do you know whether Mr. de -- did 8 you know prior to 2008 whether Mr. de Picciotto 9 had any personal investments, meaning him or his 10 family, in BLMIS? 11 A. So, he owned, and for all I know 12 still owns, he and his family own something 13 called UBP, and I certainly knew that UBP had 14 hundreds of millions of dollars with Mr. Madoff, 15 if not more than hundreds of millions of 16 dollars. In part because they had hundreds of 17 millions of dollars there, I suppose, with us. 18 I don't know that he had a -- that part of that 19 was his money or not his money, but I know what 20 Mr. Madoff told me Mr. de Picciotto had with him 21 personally. At the time believed it, I'm not 22 sure that that was necessarily the case. I'm 23 not sure today I would say that that was 24 necessarily the case. But at the time I know 25 what that figure was. And I know that part of</p>	<p>1 reportable impression that I can convey to you, 2 this is what he said. 3 Q. Do you know -- 4 A. Can you just give me one moment? 5 Q. Sure. 6 A. I just want to check something. 7 Okay. 8 Q. Do you know Ludwig Jesselson? 9 A. I did. 10 Q. How would you describe your 11 relation -- how would you have described your 12 relationship with Mr. Jesselson? 13 A. Well, Mr. Jesselson was a very 14 good friend of my father's, and roughly a 15 contemporary of his. 16 Q. And did Mr. Jesselson's family 17 have investments with Ascot and Gabriel? 18 A. One of Mr. Jesselson's sons, 19 Benjamin, had investments in those funds I think 20 on behalf of either family members in trust or 21 perhaps for a foundation. So I don't think it 22 was theirs, in the sense that you asked the 23 question. 24 Q. Okay. Was Mr. Jesselson 25 someone -- withdrawn.</p>

Page 418	Page 420
<p>1 Jack was something of a market 2 timer himself, or certainly market timing was a 3 subject and an issue that occupied him and 4 challenged him through many, many years. And 5 someone whom he thought was doing a good job of 6 market timing is someone he would have been very 7 interested in establishing a relationship with. 8 Q. Did Mr. Nash tell you -- Mr. Jack 9 Nash tell you that at some point he redeemed his 10 investment from BLMIS? 11 A. I don't remember whether he told 12 me. I knew that -- I knew that it had happened. 13 I knew, and I attached some -- I attached enough 14 significance to that to talk to Mr. Madoff about 15 it. I served on various committees with Jack 16 and I knew that he was the quickest trigger out 17 of funds of virtually anyone I knew, and an 18 extraordinarily high percentage of his 19 investments he redeemed. He basically was not 20 somebody who really easily trusted others with 21 money. That was just his nature. 22 It was an ongoing source of some 23 humor, some, between me and him that one could 24 put together an extraordinarily successful group 25 of -- successful fund of funds with managers</p>	<p>1 Q. The meeting that you referred to 2 earlier that you tried to set up between 3 Mr. Levy and Mr. Madoff, do you recall, did you 4 email Mr. Levy? 5 A. I don't remember. If so, not a 6 lot, but I just don't remember. 7 Q. Would there be any documentation 8 that evidences you trying to set up that 9 meeting? In other words, was it just over the 10 phone or -- 11 A. Would that document have been 12 something that should have been produced by us 13 because it was responsive to a subpoena from the 14 Trustee or counsel? In your opinion. If the 15 answer is yes and we haven't produced it, then 16 the answer is no. If the answer to my question 17 is yes and we haven't produced it, then the 18 answer to your question is no. 19 Do you understand what I'm saying? 20 Q. I understand what you're saying. 21 A. If you then said to me it wouldn't 22 necessarily have been responsive, then I'm not 23 so sure, but I don't remember any such document. 24 If we didn't produce one and it was something 25 that would have been subpoenaed, then the answer</p>
Page 419	Page 421
<p>1 whom he had redeemed from in the first quarter 2 year, very early on because something moved left 3 that he thought should have moved right and he 4 got out. 5 Bernie's version of it was that 6 Jack had asked him too many questions about are 7 you in or not in. And he felt that Jack was 8 trying to trade capital around his market 9 entrances and departures, and was very happy 10 just to say, you know, this is either not the 11 information I'm willing to tell you about or it 12 sounded as if they were very happy to part 13 company as client and manager. 14 Q. Did Mr. Nash ever tell you that he 15 was -- that he had an issue with BLMIS's 16 auditor? 17 MR. STEINER: Objection to form. 18 A. No. 19 Q. Did you ever discuss with Mr. Levy 20 Mr. Nash's decision to redeem from BLMIS? 21 A. I don't remember whether it came 22 up or whether it didn't come up, but there might 23 have been a reference made to it, and a comment 24 by Mr. Levy that that was not by itself going to 25 end his interest.</p>	<p>1 is there isn't one. 2 Q. Okay. 3 A. Did we produce such a document? 4 Q. Not that I'm aware of. 5 A. Okay. And would it have been 6 called for? 7 Q. Yes, it would have. 8 A. Okay, so then I was right. So the 9 answer to my question is -- your question is yes 10 and the answer to my question is no. 11 Q. Okay. I think I've lost who's 12 asking questions. 13 MR. STEINER: You're not the only 14 one. 15 Q. The record will so reflect. 16 A. Right. 17 Q. Mr. Merkin, do you know Zev 18 Wolfson? 19 A. I did. 20 Q. And who is Mr. Wolfson? 21 A. Mr. Wolfson is an immigrant to 22 this country, sometime I think in the late '40's 23 or early '50s, and made a series of fortunes in 24 different businesses, real estate -- well, the 25 real estate business, the construction business,</p>

Page 422	Page 424
<p>1 as a backer, very, very early backer of certain 2 funds, as a subsequent early backer heavily into 3 strategies that would broadly be described as 4 private equity strategies. 5 Q. Did you ever have any discussions 6 with Mr. Wolfson regarding your investments with 7 BLMIS? 8 A. With? 9 Q. With Mr. Wolfson. 10 A. My investments with -- just the 11 last. 12 Q. With BLMIS. 13 A. Oh. I thought you said Leon 14 Meyers. I'm sorry, I just didn't hear you. I 15 was going to say, I don't think so. 16 Yes. 17 Q. When did you have those 18 conversations? 19 A. Over a series of years. And they 20 would have been perhaps with him and also with 21 one or another of his sons. It was a family 22 office. 23 Q. Do you know whether or not 24 Mr. Wolfson or his family office had investments 25 with BLMIS?</p>	<p>1 A. Wow, okay. 2 Q. In the middle of the first 3 paragraph, basically in the middle of the page, 4 after Leon Meyers it says, "as well as with 5 other sophisticated investors, including people 6 who served on the Yeshiva University investment 7 committee." 8 A. Wait, wait, I have lost you. 9 "Mr. Merkin also discussed Mr. Madoff"? 10 Q. It's before that. It's about four 11 lines up from -- 12 A. There are two sentences that the 13 first four words of which -- 14 MR. STEINER: The first of those 15 two. 16 A. Right, it's the first of those 17 two. 18 Q. Yes. 19 A. The two lines that have the first 20 six words. 21 Q. So I'm referring to the first -- 22 A. Of those two. 23 Q. The first of those two, yes. 24 Referring to Mr. Merkin also discussed 25 Mr. Madoff and his investment strategy with many</p>
Page 423	Page 425
<p>1 A. I believe they did. 2 Q. Was that the subject of your 3 conversations? 4 A. I'm sure it came up. 5 Q. And do you know whether 6 Mr. Wolfson or his family office conducted due 7 diligence on BLMIS? 8 A. I believe they did. 9 Q. What is the basis for your belief? 10 A. The fact they were there, that 11 they went to -- had been to the office, they'd 12 had conversations, that it was something they 13 had looked into. 14 Q. Did Mr. Wolfson tell you that he 15 had visited BLMIS's offices? 16 A. I don't remember specifically 17 whether it was him or a son and I just don't 18 remember. 19 Q. Did Mr. Wolfson or his son send 20 you any documentation regarding their 21 investments with BLMIS? 22 A. Not that I recall. 23 Q. If you can turn to page 5. 24 A. Still in the same document? 25 Q. Same document.</p>	<p>1 other customers of Mr. Madoff. Then we 2 discussed Mr. Jesselson, Mr. Gottesman and 3 Mr. Meyers. And then it's other sophisticated 4 investors, including people who served on the 5 Yeshiva University investment committee. 6 A. Um-hum. 7 Q. Could you tell me who those other 8 sophisticated investors are? 9 A. Well, surely Mr. Horowitz. On the 10 YU investment committee, I would probably 11 include in that Morris Smith, Jonathan Kolatch. 12 Don't want to repeat names, so... 13 Those are the names that come to 14 mind at the moment. I'm sure there are more, 15 but those are the ones that I remember at the 16 moment. 17 Q. What do you recall discussing -- 18 we've already covered Mr. Horowitz. What do you 19 recall discussing with Mr. Smith? 20 A. He was just present at YU 21 investment committees, either he or an entity 22 that he was related to were limited partners or 23 became limited partners in Ascot Partners LP, 24 probably as well as Gabriel, if I remember 25 correctly. And I think it's possible his</p>

Page 426	Page 428
<p>1 mother-in-law became an investor. So it was 2 ongoing conversations. 3 The Ascot investment was a, not 4 necessarily every meeting but was a fairly 5 constant motif at YU investment committee 6 meetings. I don't remember when Morris joined 7 the committee, but he was pretty diligent in 8 attendance, less diligent in attentiveness 9 because he was constantly on his phone. You 10 know, he was constantly emailing throughout the 11 meetings. But he came. Morris worked at my 12 office for a period of years and a lot of the 13 meetings were in my office. 14 So Madoff came up and Morris was a 15 fan. Morris was a fan of Ascot generally. 16 Ascot was, some of that would -- Gedale always 17 asked about, Mr. Gottesman asked about, came up, 18 conversations and so forth. Also as I've 19 previously alluded to Mr. Madoff became 20 something of a figure at Yeshiva University 21 board, chairman of the business school, officer 22 of the board when he became the treasurer, and 23 the executive committee, which was only eight or 24 nine people, included him. 25 Q. Still on page 5, if you go to the</p>	<p>1 personal nature? 2 A. I had conversations with 3 Mr. Madoff about issues that were not -- or 4 subjects that were not business. One was 5 Yeshiva University. He knew less about Yeshiva 6 perhaps than other trustees when they first 7 joined and would ask me a lot, ask me questions 8 about Yeshiva. 9 As a member of the executive 10 committee, he was entitled to a vote on who the 11 new president would be. There were only I think 12 nine such people who had a real vote. And there 13 were one or two occasions in which he 14 interviewed prospective candidates for that job 15 and asked me to join the interview. That's the 16 one or two meetings I can think of that were 17 basically not business. 18 Q. And what year did you start 19 speaking to Mr. Madoff 10 to 15 times per year? 20 A. Don't remember. Fairly early on 21 but I don't remember. 22 Q. Any recollection, starting from 23 1990? 24 A. I can't tell you that in 1990 I 25 spoke to him 13 times, and if I spoke to him</p>
Page 427	Page 429
<p>1 top of that paragraph, the first full paragraph 2 on the page where it says, as an -- 3 A. Same paragraph, right? 4 Q. Same paragraph. As an initial 5 part of his due diligence in monitoring, it says 6 that you met with Mr. Madoff 10, 15 times a year 7 by phone or in person. See that? 8 A. Approximately, yes. 9 Q. Was it your practice then to speak 10 to Mr. Madoff about once a month? 11 A. I think I said yesterday that it 12 may well have averaged once a month but I didn't 13 necessarily speak to him once a month and 14 conversations could be bunched. 15 Q. And does that 10 -- is that 10 to 16 15 times a year purely business conversations 17 that you had with Mr. Madoff? In other words, 18 discussions about the investments, about funds? 19 A. You mean with no other subjects 20 ever coming up? 21 Q. Being the primary purpose of the 22 conversation. 23 A. Yes. 24 Q. And so would you have other 25 conversations with Mr. Madoff purely on a</p>	<p>1 nine times it would have been less than 10 to 2 15. But I spoke to him regularly starting 3 fairly early on. 4 Q. And you visited Mr. Madoff in 5 person on occasion, correct? 6 A. Yes. 7 Q. And were those occasions in his 8 office? 9 A. Yes. 10 Q. How often in a year would you go 11 to visit Mr. Madoff's offices? 12 A. Don't remember exactly. Several. 13 Q. So out of the 10 to 15 times -- 14 A. A minority. 15 Q. A minority of that 10 to 15 times? 16 A. I would think so, although it 17 doesn't mean I didn't see him at -- later on I 18 would see him, we both attended certain 19 university meetings, so I would see him there. 20 Don't think we met socially very often at all. 21 So an extraordinarily high percentage of my 22 meetings with Bernie were in his office. 23 Q. And where were you -- where would 24 you physically meet with Mr. Madoff in his 25 office? When you say his office, that's kind of</p>

Page 430	Page 432
<p>1 a broad term. Where would you actually sit down 2 and talk to him? 3 A. In his office. 4 Q. In his actual office? 5 A. Well, his office, if I remember, 6 migrated over the years that I met with him. 7 Q. In other words, you didn't meet 8 with him in a conference room or walking on the 9 trading floor? 10 A. I mean, do you want this in some 11 detail? I mean, I met with him in his office, I 12 met with him adjoining the -- I'll just take the 13 examples that you brought up. 14 So, earlier on he had an office 15 immediately adjacent to his trading room, which 16 was separated by glass and I think the glass 17 could be opened but it was partitioned off. It 18 wasn't like a wall. And I walked through the 19 trading room with him certainly once that I can 20 remember, maybe more than -- once, twice, maybe 21 three times but not more than that, I don't 22 think, and I had a series of meetings with him 23 over the years there. His office within their 24 complex at 85 Third moved a floor away and then 25 I would meet with him there. And depending on</p>	<p>1 something. 2 Peter Madoff's son died, his son 3 Roger died in the spring of, I don't remember, 4 and I went with somebody who very much wanted to 5 pay a condolence call, so I joined them and saw 6 Peter then, say within a few days after his son 7 had died. And then I think Peter came -- so I 8 came to these -- get the right name -- Gift of 9 Life Foundation meetings from time to time, and 10 Bernie was the chairman and I think Mrs. Madoff 11 was the vice-chairman of that foundation. 12 So I would see there, you know, 13 some fairly sophisticated investors who were 14 investors of Bernie who were either supporters 15 of the foundation or on the board. Richard Joel 16 who was the president of Yeshiva University 17 would be there, I think Michael Jesselson was 18 there, a son of Ludwig's, and a brother of 19 Benjamin's. I think Fred Wilpon was there, I 20 was there, and I think Bernie was there -- I'm 21 sorry, Peter was there. 22 Q. And you're referring to a specific 23 meeting of the Gift of Life? 24 A. (Witness nods.) 25 Q. Was that meeting in December of</p>
Page 431	Page 433
<p>1 how many people I was bringing in to visit, if 2 the number of people exceeded what his own 3 office could hold, let's say comfortably, we 4 would go a couple of doors down and sit in a 5 conference room. 6 So, the answer to your question I 7 guess is all of the above. 8 Q. Yes. Other than Mr. Madoff, did 9 you meet with anybody else during these 10 sessions? 11 A. From his office? 12 Q. From his office. 13 A. No. 14 Q. Mr. DiPascali -- do you know Frank 15 DiPascali? 16 A. No. To answer your question, I 17 believe I met him once. He was passing by and 18 poked his head in the door and Madoff said Frank 19 and I said, that must be Mr. DiPascali. 20 Q. Did you know Peter Madoff? 21 A. I met Peter Madoff maybe once or 22 twice. I remember in a conference room we were 23 sitting with a number of people, he poked his 24 head in the door and mostly wanted to ask Bernie 25 something and all these people here or</p>	<p>1 2008? 2 A. Yes. 3 Q. Who did you understand -- who did 4 you understand operated the computer algorithm 5 that Mr. Madoff purportedly used? 6 A. I'm not sure I -- in the sense 7 that you mean, I'm not sure I understood that 8 anybody in particular did. If there was such a 9 person, I'm not sure I have a name to report to 10 you. 11 Q. Did Mr. Madoff ever show you how 12 the computer algorithm worked? 13 A. Not that I recall. 14 Q. And did Mr. Madoff ever express to 15 you that he had employees of BLMIS who helped 16 either create the algorithm or monitor the 17 algorithm? 18 A. Mr. Madoff talked about how many 19 employees he had, how many people worked at the 20 organization, including the wholesale end of the 21 business and over time that number went up. So 22 I remember stops along the way, you know, 23 perhaps 85 to 100 and then 200 and then 300. 24 Talked about the computer system, 25 didn't really tell me specifically who was</p>

Page 442	Page 444
<p>1 A. Yes. But I might have had one or 2 two things that I kept at her desk because I 3 wanted to look at. In other words, it didn't 4 necessarily migrate there immediately. 5 More specifically, there may have 6 been -- may have been -- so now there's three 7 sources. There's a Madoff file that I kept, 8 there were pieces that belonged in that file 9 that hadn't gotten there yet when the bomb went 10 off. So, you know, we had an order in place in 11 terms of, you know, document preservation. So 12 those might have migrated over to there when 13 they were produced to you. And we may have -- 14 just, I don't know, I'm speculating, which is 15 not purposeful here, that Mike's stuff may have 16 been produced to you at the same time, in the 17 same, in the same file, so to speak, so it's 18 hard to distinguish between what was there and 19 not there. And that may not be the case. I 20 don't know. 21 Q. Well, the documents that we've 22 looked at so far in your -- in what we've called 23 the Madoff file. 24 A. Okay. 25 Q. Do you recall handing those to</p>	<p>1 THE VIDEOGRAPHER: Back on 1:28. 2 BY MR. SONG: 3 Q. Mr. Merkin, do you recall in some 4 of your earlier testimony when we were 5 discussing Mr. Madoff's strategy you discussed 6 that Mr. Madoff was trying to catch, catch 7 market turns intra-quarter? Do you recall 8 saying that? 9 MR. STEINER: Objection to the 10 form. 11 A. I don't recall saying that in 12 those words. I think I might well have said 13 that he was trying to catch a turn, but it 14 certainly didn't have to be a turn in a calendar 15 quarter. I might have either said or trying to 16 suggest that he would catch a turn that would -- 17 could often last 90 days duration. Another way 18 of saying that is three months, just distinct 19 from a calendar quarter. 20 Q. Do you recall in your experience 21 with Mr. Madoff, was he always able to catch a 22 turn at the beginning of a quarter of a calendar 23 year? 24 A. I don't remember. 25 Q. Was he ever, excuse me, did he</p>
Page 443	Page 445
<p>1 your assistant to file in some central file? 2 MR. STEINER: Objection to form. 3 A. Some, yes. The one or two things 4 I thought -- oh, were they in this pile? There 5 are one or two things I think you showed me that 6 I wasn't sure I'd -- that I'm not certain I had 7 seen before. 8 Q. If a document in that stack has 9 "file" and "Madoff" written on it in your 10 handwriting, does that indicate to you that you 11 handed it to Ms. Ferro to file for you? 12 A. Very likely. 13 MR. STEINER: I think he said or 14 put it in the outbox to her. 15 A. Right. I'm not sure I handed it 16 to her. 17 Q. You directed Ms. Ferro to file it 18 for you. 19 A. Right. 20 MR. SONG: All right. I think 21 it's a good time for lunch. All right. Why 22 don't we break for lunch. 23 THE VIDEOGRAPHER: Off the record 24 12:29. 25 (Luncheon recess taken.)</p>	<p>1 ever exit a quarter -- I'm sorry. 2 Were you ever not in treasuries at 3 the end of a quarter of a calendar year? 4 A. Probably -- 5 MR. STEINER: End of the quarter 6 or end of the calendar year? 7 MR. SONG: End of a quarter of 8 each calendar year. 9 MR. SIEV: Objection to the form. 10 A. Four quarters a year for however 11 many years, so I'm just gonna say, 50 odd 12 quarters. Were we ever in treasuries -- were we 13 ever not in treasuries at the end of those 50 14 odd quarters. 15 Q. Instead being in the basket 16 position, yes. 17 A. I don't remember. 18 Q. Did you ever check? 19 A. I always knew whether we were 20 invested or not, on any given day, unless there 21 was activity going on, so we were partially 22 coming in and I might have thought we were -- we 23 were fully coming in, I might have thought we 24 were partially coming in. But I checked every 25 single day the P & L and the balance sheet. I</p>

Page 446	Page 448
<p>1 mean and the position sheet, were we invested, 2 were we not invested, or how much. 3 Q. Did Mr. Madoff ever tell you that 4 it was important to his strategy to exit the 5 market before the end of a quarter? 6 A. No. 7 Q. It was your understanding that the 8 market turns that he was trying to catch by and 9 large lasted 90 days? 10 MR. STEINER: Objection to form. 11 A. My understanding from a 12 conversation with him? 13 Q. Yes. 14 A. Not that I specifically remember. 15 Q. Before lunch we were discussing 16 the recordings of telephone calls that you had 17 with Mr. Madoff; do you recall that discussion? 18 A. Yes. 19 Q. What mechanism did you use in 20 order to record conversations with Mr. Madoff? 21 A. Pushed the button on my telephone 22 console, whatever you -- telephone box. 23 Q. And was it a tape or a digital 24 recorder or how exactly did it work? 25 A. I told you the extent of what I</p>	<p>1 Q. Did you check them for errors? 2 A. I don't believe that I read them 3 and listened to the tape again to see whether 4 they were properly transcribed or not. I read 5 them because I read them. Not because I was 6 necessarily trying to correct something -- I 7 wasn't comparing them to anything. 8 Q. And did you know, going into a 9 conversation with Mr. Madoff, that this would be 10 a conversation I would need to record or was 11 that something that sort of happened in the 12 course of the conversation? 13 A. As I testified before lunch, the 14 latter. 15 Q. I told you to keep the big stack 16 handy. 17 A. Certainly did. 18 Q. I'd like you to turn to -- 19 A. So we're done with this, the one 20 you also -- 21 Q. You should keep that handy as 22 well. We'll be referring back to that later. 23 A. Okay. 24 Q. If you can turn to page 3384. 25 A. I'm just going to break this up a</p>
Page 447	Page 449
<p>1 know. I pushed the button and one could record 2 telephone calls on the unit that we had by 3 pushing a button that very likely said "record." 4 Q. And did you have some of these 5 recordings transcribed? 6 A. Yes. 7 Q. And why would you choose to -- 8 certain recordings to transcribe? 9 A. The recordings were made in the 10 first instance because I thought we were 11 covering important material and I wasn't able to 12 make a note of it and grasp it at the same time. 13 So the way I would make a note of it was if I 14 thought it was of sufficient importance was to 15 have it transcribed, and then I would put a copy 16 in the file. 17 Q. And who did the transcriptions? 18 A. My guess is Naomi Ferro. 19 Q. And did you review the 20 transcriptions after Mr. Ferro had completed the 21 transcription process? 22 A. Did I renew them? 23 Q. Did you review them. 24 A. Oh, review them. I mean, I read 25 them.</p>	<p>1 little bit because there's going to be too much. 2 33 -- this is now toward the end. 3 Q. Yes. 4 A. Oh, here we go, one second. So 5 I'm going to take 3384 to 3387, right? 6 Q. That's correct. If you could just 7 take a minute to look at 3384 to 3387. 8 A. One second, please. 9 You want me to actually read the 10 whole thing? 11 Q. If you can just review it and then 12 tell me if you recognize it and then I'll ask 13 you specific questions. 14 A. Just one moment. Okay. 15 Q. Do you recognize this document? 16 A. Yes. 17 Q. Can you tell me what it is? 18 A. It purports to be a transcript of 19 a part of a conversation starting somewhere in 20 the middle, that I had by telephone with 21 Mr. Madoff on or around May 1st of 2000. 22 Q. And you say on or around May 1st 23 of 2000. The document itself is dated May 1st, 24 2000, correct? 25 A. Yes.</p>

Page 490	Page 492
<p>1 Mr. Elden is referencing a Ponzi scheme?</p> <p>2 A. I don't know. I don't know -- I</p> <p>3 thought maybe I would catch what is only here as</p> <p>4 phonetic, as I listened to it. I'm assuming</p> <p>5 that there's a missing word or something?</p> <p>6 Q. It's a word that seems to be a</p> <p>7 little garbled and so the court reporter wasn't</p> <p>8 able to determine what that word was.</p> <p>9 A. As I listened I was trying to see</p> <p>10 if I could catch that word, but I can't say that</p> <p>11 I did. So...</p> <p>12 Q. We could play it again if you'd</p> <p>13 like to listen to it again.</p> <p>14 A. It's up to you.</p> <p>15 Q. Oleg, can we play that.</p> <p>16 A. Just that section.</p> <p>17 (Audio played.)</p> <p>18 (Comments off the record.)</p> <p>19 Q. Did that help?</p> <p>20 A. No, sorry.</p> <p>21 Q. Do you recall -- let me back --</p> <p>22 other than this conversation with Mr. Elden, did</p> <p>23 you have any other conversations with Mr. Elden</p> <p>24 regarding BLMIS?</p> <p>25 A. Yes.</p>	<p>1 A. I don't know.</p> <p>2 Q. And given the fact that you don't</p> <p>3 recall this conversation, I'm guessing you don't</p> <p>4 recall how or where in the flow of the</p> <p>5 conversation this recording took place?</p> <p>6 A. Oh, I don't doubt that this</p> <p>7 conversation took place. When I said I don't</p> <p>8 remember it, I'm saying I don't remember it -- I</p> <p>9 can't tell you when it happened, and I wouldn't</p> <p>10 have remembered, you know, the words that he</p> <p>11 said or be able to quote it. But I wasn't</p> <p>12 casting doubt on the --</p> <p>13 Q. No, I understand. You don't</p> <p>14 recall the impetus for this conversation or why</p> <p>15 you chose to record and keep this conversation?</p> <p>16 A. Why I chose to record it, I don't</p> <p>17 know. I can observe that I didn't -- I gather</p> <p>18 from you that I didn't transcribe it.</p> <p>19 Q. We don't have a transcription of</p> <p>20 this.</p> <p>21 A. Had there been a transcription of</p> <p>22 this, I guess we would have furnished it,</p> <p>23 although it's not per se a reference to</p> <p>24 Mr. Madoff. But the -- don't know. I can't</p> <p>25 tell you why I recorded it. May have liked the</p>
Page 491	Page 493
<p>1 Q. Why -- when were those</p> <p>2 conversations?</p> <p>3 A. Over the years it was a subject</p> <p>4 that came up in discussions between Mr. Elden</p> <p>5 and me.</p> <p>6 Q. What was the nature of those</p> <p>7 discussions?</p> <p>8 A. I mean, I'm not sure I have any</p> <p>9 specific discussions in mind at the moment. I</p> <p>10 think at some point it was certainly my</p> <p>11 impression that Mr. Elden was a limited --</p> <p>12 sorry, not a limited partner, an investor of</p> <p>13 Mr. Madoff.</p> <p>14 Mr. Elden, the things that he says</p> <p>15 here, reputation, the money, but he'll tell you,</p> <p>16 he's very frank, he's very forthcoming, he got</p> <p>17 some insight in to know how he operates, what he</p> <p>18 does and doesn't do. These were all the kinds</p> <p>19 of things that Dick would tell me if he had had</p> <p>20 a meeting with Bernie, and clearly he had, what</p> <p>21 was to his way of thinking, a very constructive</p> <p>22 meeting, whenever it was, how long prior to</p> <p>23 whenever we had this conversation.</p> <p>24 Q. Do you know why you recorded this</p> <p>25 conversation?</p>	<p>1 sound of his voice, I don't know.</p> <p>2 Q. Other than in this conversation</p> <p>3 with Mr. Elden, did you have any conversations</p> <p>4 with any other BLMIS investor where you</p> <p>5 discussed a Ponzi scheme?</p> <p>6 MR. STEINER: Objection to form.</p> <p>7 A. I didn't discuss Ponzi scheme. I</p> <p>8 wasn't the person who said anything about a</p> <p>9 Ponzi scheme.</p> <p>10 Q. Did any other BLMIS investor other</p> <p>11 than Mr. Elden ever mention Ponzi scheme to you</p> <p>12 in the context of BLMIS?</p> <p>13 MR. STEINER: Objection to form.</p> <p>14 A. Not that I recall.</p> <p>15 Q. You can put that one aside and</p> <p>16 we're going to turn to 368.</p> <p>17 A. 368?</p> <p>18 Q. Yes.</p> <p>19 A. So this is part of this? Yes.</p> <p>20 Okay.</p> <p>21 I know you're Nancy. Are you</p> <p>22 Nancy Bendish?</p> <p>23 THE REPORTER: Yes.</p> <p>24 Q. Trustee's 368 is a transcription</p> <p>25 of an audio file produced to us as bd.mp3.</p>

Page 506	Page 508
<p>1 A. Yes.</p> <p>2 Q. Should that be order flow?</p> <p>3 A. Might be. I mean, I was --</p> <p>4 wouldn't say that it is, but certainly might be.</p> <p>5 Q. And are you able to identify Male</p> <p>6 Voice number 2?</p> <p>7 A. Yes. That's me.</p> <p>8 Q. And do you recall having this</p> <p>9 conversation with Mr. Madoff?</p> <p>10 A. Not specifically, no.</p> <p>11 Q. Do you know what your -- next page</p> <p>12 where you reference Bayou.</p> <p>13 A. Do you have some idea what is said</p> <p>14 on line 22?</p> <p>15 Q. I do not.</p> <p>16 A. Okay.</p> <p>17 Q. That's why the dashes are there.</p> <p>18 A. Can possibly figure that one out.</p> <p>19 Q. See on page 3 you reference Bayou.</p> <p>20 A. Um-hum.</p> <p>21 Q. What is Bayou?</p> <p>22 A. Let me just say that line 3, as I</p> <p>23 listened to it very quickly I thought I said I'm</p> <p>24 sure you got one or two. But I could listen</p> <p>25 again and tell you if that's what I really said</p>	<p>1 Okay, go ahead. Sorry, line 14.</p> <p>2 (Audio played.)</p> <p>3 Q. My original question was what is</p> <p>4 Bayou?</p> <p>5 A. I'm not sure if it's one or two;</p> <p>6 it could be "one too." This transcript could be</p> <p>7 correct.</p> <p>8 Q. Okay.</p> <p>9 A. Bayou is a -- was a fund, you'll</p> <p>10 do a better job in supplying the date than I</p> <p>11 will, that ended up in scandal, the details of</p> <p>12 which I don't remember at the moment, but I</p> <p>13 think monies were stolen, people went to jail,</p> <p>14 so on and so forth.</p> <p>15 Q. Do you recall having conversations</p> <p>16 with Mr. Madoff regarding Bayou, other than in</p> <p>17 this transcript?</p> <p>18 A. I do.</p> <p>19 Q. And what were those conversations?</p> <p>20 A. I recall his -- maybe this is the</p> <p>21 conversation I recall, something about when</p> <p>22 there's a scandal or a scam I guess is the word</p> <p>23 that's used here in the hedge fund industry</p> <p>24 questions come up about other managers</p> <p>25 routinely. One of those managers -- questions</p>
Page 507	Page 509
<p>1 or not. And it doesn't make a lot of difference</p> <p>2 but that's what I heard rather than "one too."</p> <p>3 Q. Okay. Why don't we play it again</p> <p>4 and you can put your headphones on or you can</p> <p>5 listen.</p> <p>6 A. Okay.</p> <p>7 (Audio played.)</p> <p>8 A. Could you just hold for a second?</p> <p>9 Where it says we should reinstitute dash dash</p> <p>10 dash dash, it's something for order flow. You</p> <p>11 see that line 12?</p> <p>12 Q. Um-hum.</p> <p>13 A. You want to play it again? I'm</p> <p>14 asking you, you don't have to. It's up to you,</p> <p>15 Brian.</p> <p>16 Q. I want to get it as accurate as</p> <p>17 possible.</p> <p>18 A. If that's what you want, then do</p> <p>19 you mind playing that again.</p> <p>20 (Audio played.)</p> <p>21 A. Stop. I think that's what it</p> <p>22 says.</p> <p>23 Q. Okay.</p> <p>24 A. Not sure, but I think that's what</p> <p>25 it says.</p>	<p>1 come up about a lot of funds, about a lot of</p> <p>2 different strategies. At that time I was</p> <p>3 sitting on investment committees and so the</p> <p>4 investment committee people would ask, well,</p> <p>5 Bayou -- none of the committees that I chaired</p> <p>6 had investments with Bayou. So we weren't</p> <p>7 focused on Bayou, Bayou was not a particularly</p> <p>8 big issue for those committees or in my office.</p> <p>9 But an issue with a fund might</p> <p>10 provoke questions about other funds, and</p> <p>11 questions might easily come up about Bernie</p> <p>12 because so many of the persons who were</p> <p>13 investors of his didn't have the transparency.</p> <p>14 They just got a number, so at that point you</p> <p>15 would say, you might if you were the recipient</p> <p>16 of that information, here is at least something</p> <p>17 that looks -- that all I have is a number. Do I</p> <p>18 have any evidence of the trades.</p> <p>19 So that's why, as people reacted</p> <p>20 to a scam by saying, oh, let's try to figure out</p> <p>21 if all of my money is safe in all these other</p> <p>22 places, you get lots of questions about other</p> <p>23 places, and questions about Bernie as well.</p> <p>24 I just must say, Bernie sounds</p> <p>25 incredibly relaxed about the whole thing, as I</p>

Page 510	Page 512
<p>1 listen to it today. Where you can sort of hear</p> <p>2 him a little bit kind of working the con, in a</p> <p>3 way.</p> <p>4 Q. Did you do anything as a result --</p> <p>5 did you change your due diligence practices as a</p> <p>6 result of Bayou?</p> <p>7 A. I don't -- I certainly spent time</p> <p>8 talking to Madoff about issues that related to</p> <p>9 Bayou. I'm not sure that we announced a whole</p> <p>10 new revision to our due diligence procedures.</p> <p>11 MR. SONG: Now is a good point for</p> <p>12 a break.</p> <p>13 THE VIDEOGRAPHER: Off the record</p> <p>14 2:52 p.m.</p> <p>15 (Recess taken.)</p> <p>16 THE VIDEOGRAPHER: Back on 3:12.</p> <p>17 BY MR. SONG:</p> <p>18 Q. Mr. Merkin, if you could turn to</p> <p>19 Trustee's Exhibit 354 and go to page 5 of that</p> <p>20 exhibit. First full paragraph, within that</p> <p>21 first full paragraph there's a discussion of the</p> <p>22 meetings that you arranged and participated</p> <p>23 between Mr. Madoff and certain investors in the</p> <p>24 funds. Do you see that?</p> <p>25 A. Starting with the third sentence?</p>	<p>1 Q. You're not aware of a direct</p> <p>2 investment with BLMIS?</p> <p>3 A. I'm not aware of one but I would</p> <p>4 not necessarily be aware of one.</p> <p>5 Q. And what were the circumstances</p> <p>6 related to the meeting that you set up between</p> <p>7 Mr. Bravmann and Mr. Madoff?</p> <p>8 A. Don't remember.</p> <p>9 Q. Do you recall what time frame this</p> <p>10 was in?</p> <p>11 A. No.</p> <p>12 Q. Did you attend that meeting?</p> <p>13 A. I don't remember.</p> <p>14 Q. Did you have -- did you take any</p> <p>15 notes of that meeting?</p> <p>16 A. I don't remember.</p> <p>17 Q. And do you know if you have any</p> <p>18 documentation at all evidencing this meeting?</p> <p>19 A. Did we produce any, may I ask?</p> <p>20 Q. Would you have had an email, say,</p> <p>21 with Mr. Bravmann setting up the meeting?</p> <p>22 A. I might have. I don't know. I</p> <p>23 would not testify that we didn't but I don't --</p> <p>24 I don't know that that's the way it would have</p> <p>25 happened. It may have just been telephone calls</p>
Page 511	Page 513
<p>1 Q. From time to time.</p> <p>2 A. Yes.</p> <p>3 Q. We talked about Mr. Horowitz</p> <p>4 already, correct?</p> <p>5 A. Um-hum.</p> <p>6 Q. Who is Ludwig Bravmann?</p> <p>7 A. Ludwig Bravmann is a gentleman who</p> <p>8 was, I must say, very proud of the fact that he</p> <p>9 was Bernard Madoff's predecessor as treasurer of</p> <p>10 Yeshiva University, so he used to identify</p> <p>11 himself from time to time, who is now I think a</p> <p>12 vice-chairman of Yeshiva University and has been</p> <p>13 a member of the Yeshiva University investment</p> <p>14 committee certainly all the time that I sat on</p> <p>15 that committee, which is probably 18-ish plus or</p> <p>16 minus years. Has had a very long career in the</p> <p>17 securities industry going back to early Op Co</p> <p>18 days, Oppenheimer & Company days, probably in</p> <p>19 the early '50s.</p> <p>20 Q. Are you aware whether Mr. Bravmann</p> <p>21 had a BLMIS investment?</p> <p>22 A. Well, various entities that relate</p> <p>23 to him, certainly fiduciarily speaking, were</p> <p>24 limited partners in Ascot Partners LP. I don't</p> <p>25 know if he had any other.</p>	<p>1 that, for all I know, my secretary did and got</p> <p>2 the times that worked for both of them.</p> <p>3 They were -- they meaning neither</p> <p>4 Mr. Bravmann or Mr. Madoff, as best as I can</p> <p>5 remember, were very big on emails.</p> <p>6 Q. The next two names on the list</p> <p>7 here are Alec Hackel and Christof Reichmuth. Do</p> <p>8 you see those?</p> <p>9 A. I do.</p> <p>10 Q. Who is Alec Hackel?</p> <p>11 A. Alec Hackel is a, I think, German,</p> <p>12 of German origination, possibly a spot of South</p> <p>13 Africa in there as well, very senior figure in</p> <p>14 the commodities industry at Philip Brothers and</p> <p>15 at Marc Rich & Company, who was based, in</p> <p>16 relevant times, in Zug, Switzerland or in</p> <p>17 Meggen, Switzerland and was, I think, the</p> <p>18 chairman of the board, but certainly the senior</p> <p>19 figure from the point of view of the</p> <p>20 capitalization of a money management operation,</p> <p>21 later licensed Swiss bank, called Reichmuth &</p> <p>22 Company that had been started by Christof</p> <p>23 Reichmuth's father Carl.</p> <p>24 And perhaps to save you some</p> <p>25 questions, at which Patrick Erne, which is the</p>

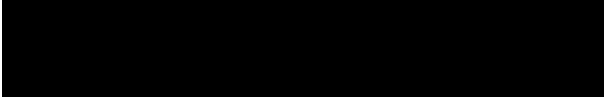
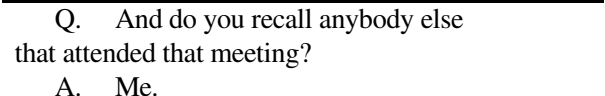
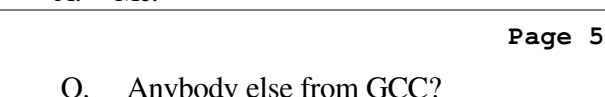
Page 514

1 name after Christof Reichmuth, so to take those
 2 three names together rather than two names
 3 together...
 4 Q. Sure.
 5 A. ...worked.
 6 Q. Did there come a time when you set
 7 up a meeting between Mr. Reichmuth, Mr. Hackel
 8 and Mr. Madoff?
 9 A. I set up meetings for Mr. Hackel,
 10 I set up meetings for Mr. Reichmuth, I set up
 11 meetings for Mr. Erne. I don't know at which
 12 meetings the two of them might have overlapped.
 13 Q. Did -- I want to start with
 14 Mr. Reichmuth. Do you recall when you set up
 15 the meeting for Mr. Reichmuth?
 16 A. Christof?
 17 Q. Yes.
 18 A. This would have probably been not
 19 that long after Reichmuth & Company was started
 20 by his father. So early in the period we're
 21 talking about, but I don't remember when.
 22 Q. Does the late 1990s sound correct
 23 to you?
 24 A. That's early in the period we're
 25 talking about, so I can't remember exactly when.

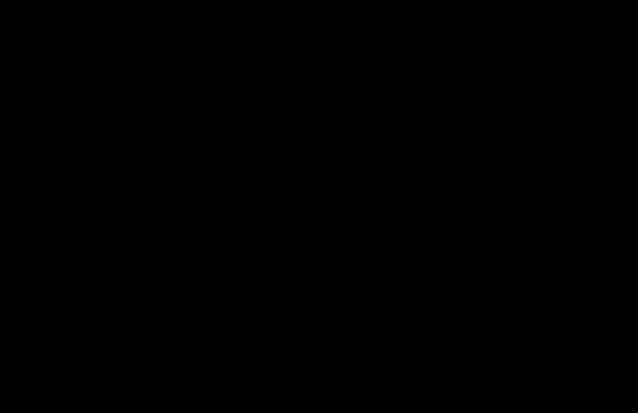
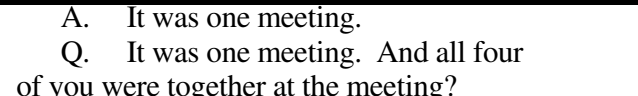
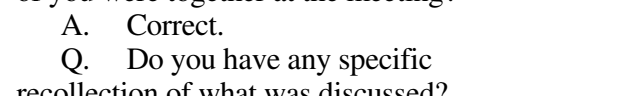
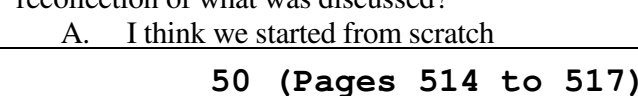


Page 515

1 I would have conjectured 2000 but, you know,
 2 it's not a different -- not a completely
 3 different answer.
 4 Q. Do you recall attending the
 5 meeting with Mr. Reichmuth and Mr. Madoff?
 6 A. I recall attending meetings at
 7 Mr. Madoff's office with various members of the
 8 Reichmuth staff. I'm not sure I remember this
 9 one specifically.
 10 Q. Okay. Do you recall what the
 11 purposes were of the -- do you recall what the
 12 purposes of the meeting between Mr. Reichmuth
 13 and Mr. Madoff were?
 14 A. Broadly speaking, Reichmuth &
 15 Company had money management clients, of which
 16 possibly Mr. Hackel was one and then had a whole
 17 series of clients who I didn't know, and they
 18 had -- over a period of time were in the process
 19 of setting up at least one and probably two what
 20 became fairly large fund of funds.
 21 In the first one, chronologically,
 22 they had a very large position relative to the
 23 size of the fund in Ascot Fund Limited.
 24 Q. Did you ever tell Mr. Reichmuth
 25 that BLMIS only acted as a broker for Ascot

Page 516

1 Fund?
 2 A. No.
 3 Q. Do you recall how many meetings
 4 you set up between Mr. Reichmuth and Mr. Madoff?
 5 Mr. Christof Reichmuth.
 6 A. No.
 7 Q. Was it more than one?
 8 A. Could very well be.
 9 Q. Did you ever disclose to
 10 Mr. Christof Reichmuth that Ariel had capital
 11 invested with BLMIS?
 12 A. To Christof specifically?
 13 Q. Yes.
 14 A. I don't remember a specific
 15 conversation with Christof.
 16 Q. Okay. Do you recall setting up a
 17 meeting for Mr. Patrick Erne and Mr. Madoff in
 18 October of 2007?
 19 A. Sounds right.
 20 
 21 
 22 
 23 Q. And do you recall anybody else
 24 that attended that meeting?
 25 A. Me.

Page 517

1 Q. Anybody else from GCC?
 2 A. Don't think so. I don't remember,
 3 but -- not that I remember.
 4 Q. Why was this meeting arranged?
 5 A. I'm sorry?
 6 Q. Why was the meeting arranged?
 7 
 8 
 9 
 10 
 11 
 12 
 13
 14
 15
 16
 17
 18
 19 A. It was one meeting.
 20 Q. It was one meeting. And all four
 21 of you were together at the meeting?
 22 A. Correct.
 23 Q. Do you have any specific
 24 recollection of what was discussed?
 25 A. I think we started from scratch

50 (Pages 514 to 517)

Page 574	Page 576
<p>1 not, so I don't recall that at all.</p> <p>2 Q. Did Mr. Madoff ever tell you that</p> <p>3 his algorithm or black box had a specific name</p> <p>4 or code name in this case?</p> <p>5 A. I'm sorry, too many ors. I don't</p> <p>6 remember hearing the phrase "time slicing" from</p> <p>7 Mr. Madoff, if that's your question.</p> <p>8 Q. Did he ever give you a name for</p> <p>9 the algorithm?</p> <p>10 A. He would talk about our strategy</p> <p>11 and about our program. I truly don't believe I</p> <p>12 ever heard -- no, not -- let me just say, not</p> <p>13 that I recall.</p> <p>14 Q. Did Mr. Madoff tell UBP during the</p> <p>15 November 25th, 2008 meeting that he never</p> <p>16 overrides the algorithm but personally makes</p> <p>17 decisions when to enter into a trade?</p> <p>18 A. Well, those -- the two halves of</p> <p>19 those sentences are not sustainable in one</p> <p>20 sentence.</p> <p>21 Q. Okay, let me try --</p> <p>22 A. What Mr. Madoff told me any number</p> <p>23 of occasions, and I don't remember how this came</p> <p>24 up in November -- I don't know how he said it in</p> <p>25 the meeting on November 25th, and I think we've</p>	<p>1 not they knew of the Madoff involvement in</p> <p>2 Ascot, and whether they knew about the Madoff</p> <p>3 involvement in Ariel.</p> <p>4 Q. Yes.</p> <p>5 A. If they knew of the Madoff</p> <p>6 involvement in Ascot, in my opinion, is a fact.</p> <p>7 I think it's more likely than not that they knew</p> <p>8 of the involvement in Ariel. My level of</p> <p>9 conviction there is not as high as it was or is</p> <p>10 on the Ascot piece, and we did not challenge</p> <p>11 them on Ariel. We challenged them only on Ascot</p> <p>12 for that reason.</p> <p>13 Q. And you're referring to some sort</p> <p>14 of litigation between you and Reichmuth &</p> <p>15 Company?</p> <p>16 A. Yes.</p> <p>17 Q. Mr. Merkin, do you recall</p> <p>18 yesterday you referred to an accounting firm</p> <p>19 called Avellino & Bienes?</p> <p>20 A. Yes.</p> <p>21 Q. And Avellino & Bienes was the</p> <p>22 subject of several news articles that you kept</p> <p>23 in your Madoff file, correct?</p> <p>24 A. I don't know how many, but yes.</p> <p>25 Q. Other than those articles, did you</p>
Page 575	Page 577
<p>1 discussed this already, is the algorithms were</p> <p>2 incredibly important and were subject to and</p> <p>3 subordinate to his, what I said colloquially was</p> <p>4 a gut check. That the algorithms could be</p> <p>5 beeping buy buy buy buy; if it didn't go along</p> <p>6 with his overall sense of the market, he wasn't</p> <p>7 buying.</p> <p>8 Q. Okay, you can put that to the</p> <p>9 side.</p> <p>10 MR. STEINER: Might be a good time</p> <p>11 for a break.</p> <p>12 MR. SONG: All right. If we can</p> <p>13 keep it short so we can get Mr. Merkin out as</p> <p>14 quickly as possible.</p> <p>15 THE VIDEOGRAPHER: Off the record</p> <p>16 4:35.</p> <p>17 (Recess taken.)</p> <p>18 THE VIDEOGRAPHER: We're back on</p> <p>19 the record 4:54.</p> <p>20 THE WITNESS: Just want to mention</p> <p>21 something to you, make sure that one of my</p> <p>22 answers is as clear as possible.</p> <p>23 You had asked me about various</p> <p>24 persons at Reichmuth & Company and about</p> <p>25 Reichmuth & Company as a firm as to whether or</p>	<p>1 have any other source of information regarding</p> <p>2 Avellino & Bienes?</p> <p>3 A. Other than a discussion with</p> <p>4 Mr. Madoff about them, no.</p> <p>5 Q. And what was --</p> <p>6 A. In addition to that I'm saying, in</p> <p>7 addition to the articles I had conversations</p> <p>8 with Bernie about them, but that was it.</p> <p>9 Q. And what was your discussions with</p> <p>10 Mr. Madoff about it?</p> <p>11 A. He kind of said, yeah, it was me</p> <p>12 and them. I didn't know anything about Avellino</p> <p>13 & Bienes until I read the first of the articles</p> <p>14 that I read, which was the Wall Street Journal</p> <p>15 article, and it was already over.</p> <p>16 Q. And did you and Mr. Madoff discuss</p> <p>17 the subsequent SEC investigation of Avellino &</p> <p>18 Bienes?</p> <p>19 A. I don't know if it was subsequent.</p> <p>20 That is, I have to go back and read the Journal</p> <p>21 article and see whether that was written only</p> <p>22 after the SEC investigation was over. I doubt</p> <p>23 it, but I just don't remember the sequence.</p> <p>24 Q. Take out the word "subsequent."</p> <p>25 Did you have a conversation with Mr. Madoff</p>

Page 578	Page 580
<p>1 regarding an SEC investigation into Avellino & 2 Bienes?</p> <p>3 A. There's a reference to the SEC 4 investigation in that article. And Richard 5 Walker, who was the regional administrator in 6 New York at the SEC at that time, is quoted. I 7 don't remember exactly what he says in that 8 quote, because I don't remember the article that 9 well, but I believe he is named or maybe he's 10 just referred to and there's not a quote in 11 quotations. I just don't remember it that 12 clearly.</p> <p>13 But we discussed the article and 14 we may have discussed Richard Walker, in which 15 case the answer to your question did we discuss 16 anything about the SEC would have been yes. If 17 we didn't bring up Richard Walker, I don't 18 remember otherwise a discussion about the SEC.</p> <p>19 Q. How often would you talk about the 20 SEC with Mr. Madoff?</p> <p>21 A. I don't know.</p> <p>22 Q. In your 10 to 15 conversations per 23 year, do you recall whether you had a 24 conversation once or twice per year or was it 25 one time in your entire, the entire span of your</p>	<p>1 A. Well, I should add something, 2 which is -- I should ask you. You're 3 undoubtedly asking me whether I remember now 4 that I reviewed it before December 11th, 2008?</p> <p>5 Q. That's correct.</p> <p>6 A. Okay. So the simple truth is I 7 have been asked questions about that document 8 enough times in enough proceedings since, let's 9 say, January 2009 or since early 2009, that I 10 can't tell you today whether what I see in front 11 of me in my mind's eye as the document is 12 something that I remember from, say, the second 13 half or sometime in 2008 or that I remember only 14 from those proceedings.</p> <p>15 Q. Okay. You also mentioned in your 16 earlier testimony some due diligence done by 17 some French banks. Do you recall that 18 testimony?</p> <p>19 A. Earlier today?</p> <p>20 Q. Yes.</p> <p>21 A. I remember the reference to the 22 French banks, yes.</p> <p>23 Q. And one of those banks is BNP 24 Paribas?</p> <p>25 A. I believe so.</p>
Page 579	Page 581
<p>1 relationship?</p> <p>2 A. I don't think it was one time in 3 the entire span of the relationship, and I don't 4 know how often. I just don't remember. I'm 5 sure it was not in every conversation. I'm sure 6 it was not only once, and between those two, I'm 7 not sure.</p> <p>8 Q. And you're aware at some point 9 Mr. Madoff registered as an investment advisor 10 with the SEC?</p> <p>11 A. I am.</p> <p>12 Q. And were you -- you've referred to 13 form ADV filings in your prior testimony?</p> <p>14 A. Mangled it a few times and with 15 your able assistance, got it right.</p> <p>16 Q. And did you review the form ADV 17 filings starting in 2006?</p> <p>18 A. I'm not sure -- I just don't 19 remember when I started reviewing them and how 20 many I reviewed. I remember the last one. I 21 don't remember if there was any -- the last one 22 stands out. I'm not sure what I did with the 23 prior ones.</p> <p>24 Q. So your -- you do recall reviewing 25 the one filed in 2008?</p>	<p>1 Q. Was BNP Paribas interested in 2 creating a leveraged product with Ascot?</p> <p>3 A. Yes.</p> <p>4 Q. And did anyone from BNP Paribas 5 tell you that they had conducted due diligence 6 on BLMIS?</p> <p>7 A. I think so.</p> <p>8 Q. Who was that person?</p> <p>9 A. Don't remember the names.</p> <p>10 Q. What was the due diligence that 11 they conducted?</p> <p>12 A. Let me just say what I remember. 13 There were possibly two different sources of 14 credit, of debt, and I had meetings in offices 15 in New York City possibly with more than one 16 group. There was a series of meetings in a 17 group that then had an office and, for all I 18 know, still does at 9 West 57th Street. If you 19 know that that's who BNP Paribas -- if you know 20 them to have been at 9 West. There was a group 21 called IXIS, I can't remember, something like 22 that. It's either a subsidiary of one of these 23 banks or -- either a subsidiary of BNP or the 24 other one, I had meetings with them. I had 25 meetings, I believe, at the Madoff office. I</p>

Page 598	Page 600
<p>1 Q. I'm not talking about 2 Mr. DiPascali. I'm just talking about when 3 would you authorize Mr. Autera -- 4 A. I was talking about Mr. DiPascali. 5 Meaning, I don't know what happens when Mr. -- 6 what would have happened when Mr. Autera spoke 7 to -- to Mr. DiPascali. I tried to make it a 8 practice, certainly as best as I could, my 9 practice to call Bernie with our adds and 10 subtracts. 11 I would say as a broad matter that 12 Mike knew what the adds and subtracts were going 13 to be. He ran the back office. 14 Q. Mr. Merkin, you testified earlier 15 regarding the audits that BDO was performing on 16 behalf of the defendant funds. 17 A. I'm sorry, we're done with this, 18 right? 19 Q. Yes. 20 A. Are we done with this or still not 21 yet? 22 Q. Not yet. 23 A. Wow, okay. 24 I did. 25 Q. And I believe you testified that</p>	<p>1 Q. Did you do anything to ensure that 2 BDO was reviewing the BLMIS material it 3 received? 4 MS. ARCHER: Object to the form. 5 A. BDO was the auditor we engaged. 6 We engaged them to audit our other funds. I 7 don't remember specifically having a 8 conversation of the type that you described. 9 Q. Are you aware that your attorneys 10 have argued that BDO referred investors to 11 Ascot? 12 MR. STEINER: Objection to the 13 form. 14 A. Am I aware that the attorneys have 15 argued that? 16 Q. That your attorneys in this 17 litigation have argued that BDO has referred 18 investors to Ascot? 19 A. I'm not aware of what my attorneys 20 argued in this litigation. So you're saying 21 that -- I guess I don't understand the question. 22 Q. Let me ask it this way. 23 A. Okay. 24 Q. Did BDO refer investors to Ascot? 25 A. I believe they did.</p>
Page 599	Page 601
<p>1 you thought that BDO was independently verifying 2 the funds' assets at BLMIS; is that correct? 3 MR. STEINER: Objection to form. 4 A. I think I was reading something 5 that we had previously submitted. 6 "As part of the audit BDO reviewed 7 and tested various trade confirmations, monthly 8 statements, communicated directly with BLMIS," 9 meaning the Madoff office, "concerning the value 10 of the funds' investments." 11 And BDO audited our books and 12 represented the value of those funds as of the 13 date of which the audit spoke. 14 Q. Did you ever talk to Mr. Madoff 15 about giving BLMIS -- giving BDO access to 16 BLMIS's books and records? 17 A. I might well have. I don't 18 remember. 19 Q. Do you recall ever speaking with 20 your auditors directly? 21 A. To BDO as a firm? 22 Q. To any member of the audit team 23 that would come to GCC. 24 A. I don't remember such a 25 conversation.</p>	<p>1 Q. And what's the basis for that 2 claim? 3 A. Conversations with BDO in which 4 they were -- they certainly knew what Ascot was, 5 they certainly understood the strategy, they 6 certainly reviewed confirmations, they certainly 7 knew the returns, because they audited them. 8 There was a time that they produced a 9 compilation of the returns and asked whether 10 they could introduce an investor to the fund. 11 Q. And who were these conversations 12 with? 13 A. The one about introducing an 14 investor to the fund? 15 Q. Yes. 16 A. Well, with me. 17 Q. Who at BDO I mean? 18 A. Oh. Michael Andreola. 19 Q. And is Michael Andreola an 20 auditor? 21 A. I mean, does he work at BDO 22 Seidman? Is he an accountant there? Yes. 23 Q. Your understanding is he's an 24 accountant? 25 A. I believe so.</p>

Page 606	Page 608
<p>1 A. I might have, sure.</p> <p>2 Q. You don't recall specifically?</p> <p>3 A. I don't recall specifically any --</p> <p>4 I don't recall the specifics of a conversation</p> <p>5 with them.</p> <p>6 Q. Did Mr. Joel Ehrenkranz ever tell</p> <p>7 you that he met with Mr. Madoff?</p> <p>8 A. I don't remember.</p> <p>9 Q. Did he ever tell you that he</p> <p>10 declined to invest with BLMIS?</p> <p>11 A. Directly?</p> <p>12 Q. Yes.</p> <p>13 A. Not that I recall.</p> <p>14 Q. Did Mr. Joel Ehrenkranz ever tell</p> <p>15 you that he had concerns about Madoff's auditor?</p> <p>16 A. No.</p> <p>17 Q. Did Mr. Joel Ehrenkranz ever tell</p> <p>18 you that he -- that he was concerned that BLMIS</p> <p>19 self-cleared?</p> <p>20 A. Might have come up as a subject,</p> <p>21 might have been a subject that came up in our</p> <p>22 conversations. I don't remember that</p> <p>23 specifically.</p> <p>24 Q. Do you recall whether or not the</p> <p>25 Ehrenkranzes redeemed the investment that they</p>	<p>1 A. I just don't remember.</p> <p>2 Q. Did you ever meet with Howard</p> <p>3 Wohl?</p> <p>4 A. Yes.</p> <p>5 Q. And was Mr. Wohl at Ivy Asset</p> <p>6 Management at the time?</p> <p>7 A. I believe so.</p> <p>8 Q. Did you ever meet with Fred Sloan?</p> <p>9 A. Yes.</p> <p>10 Q. Was Mr. Sloan also at Ivy Asset</p> <p>11 Management?</p> <p>12 A. I believe so.</p> <p>13 Q. Did you ever have meetings with</p> <p>14 Mr. Sloan or Mr. Wohl and discuss BLMIS?</p> <p>15 A. Surely possible, yes.</p> <p>16 Q. Did you ever discuss Ascot's</p> <p>17 capital allocation with Mr. Sloan or Mr. -- I'm</p> <p>18 sorry, with representatives from Ivy Asset</p> <p>19 Management?</p> <p>20 A. I might have.</p> <p>21 Q. Did you tell Ivy Asset Management</p> <p>22 that Ascot is a Madoff-type basket strategy that</p> <p>23 you could do but not as well as Bernie?</p> <p>24 A. I don't remember saying that.</p> <p>25 Q. Did you ever tell representatives</p>
Page 607	Page 609
<p>1 were associated with in Ascot Partners at the</p> <p>2 end of 1995?</p> <p>3 A. I know that they redeemed and I</p> <p>4 don't know when it was.</p> <p>5 Q. Did they tell you that they had</p> <p>6 concerns that Madoff's, Mr. Madoff's returns</p> <p>7 were too consistent to be believed?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Are you familiar with an entity</p> <p>10 known as Ivy Asset Management?</p> <p>11 A. Yes.</p> <p>12 Q. And what is Ivy Asset Management?</p> <p>13 A. As I remember it, or as I know it,</p> <p>14 Ivy Asset Management was an investment advisory</p> <p>15 firm based in Garden City, Long Island that</p> <p>16 managed one or another fund of funds.</p> <p>17 Q. And were you aware that Ivy Asset</p> <p>18 Management had investments with BLMIS?</p> <p>19 A. When?</p> <p>20 Q. In the '90s.</p> <p>21 A. When was I aware, I'm sorry? To</p> <p>22 make the question clear.</p> <p>23 Q. Were you aware in the 1990s that</p> <p>24 Ivy Asset Management had an investment with</p> <p>25 BLMIS?</p>	<p>1 from Ivy Asset Management that you were a</p> <p>2 fiduciary to Madoff's children?</p> <p>3 A. I doubt that. I don't think I did</p> <p>4 say that. And I wasn't, so I guess that means I</p> <p>5 didn't say it.</p> <p>6 Q. Did you ever --</p> <p>7 A. So the answer to your question is</p> <p>8 no.</p> <p>9 Q. Did you ever refer to -- did you</p> <p>10 ever say to Ivy Asset Management that</p> <p>11 understanding Madoff is like finding Pluto?</p> <p>12 A. As I sit here today, I don't</p> <p>13 remember saying that at any particular time. I</p> <p>14 don't remember saying it.</p> <p>15 Q. Do you remember saying it to</p> <p>16 anyone?</p> <p>17 A. I don't remember any specific</p> <p>18 conversation in which I said that.</p> <p>19 Q. Did Mr. Madoff attend your</p> <p>20 children's bar and bat mitzvahs?</p> <p>21 A. Mr. Madoff certainly attended one</p> <p>22 or another of them. I don't remember which he</p> <p>23 did -- well, I remember which he did, I'm not</p> <p>24 sure -- I'm not sure I remember which he did and</p> <p>25 which he didn't.</p>

Page 610	Page 612
<p>1 Q. So he attended at least one of</p> <p>2 your children's --</p> <p>3 A. Correct. And very possibly more</p> <p>4 than one.</p> <p>5 Q. Do you know Noreen Harrington?</p> <p>6 A. Again, please.</p> <p>7 Q. Do you know Noreen Harrington?</p> <p>8 A. No.</p> <p>9 Q. Do you recall meeting -- do you</p> <p>10 know an entity known as Sterling Stamos?</p> <p>11 A. Yes.</p> <p>12 Q. And was Sterling Stamos an</p> <p>13 investor in Ascot?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall having a meeting in</p> <p>16 June of 2003 with representatives from Sterling</p> <p>17 Stamos?</p> <p>18 A. Not specifically.</p> <p>19 Q. What general recollections do you</p> <p>20 have?</p> <p>21 A. Of that meeting in June 2003?</p> <p>22 Q. Yes.</p> <p>23 A. None. But that just means I don't</p> <p>24 remember there being a meeting.</p> <p>25 Q. Are you familiar with an entity</p>	<p>1 Q. What was your relationship with</p> <p>2 Spring Mountain Capital?</p> <p>3 A. I was a, I suppose a consultant to</p> <p>4 them, a supply of credit and may have had other</p> <p>5 affiliations with them as well. I was an</p> <p>6 investor in investment products of theirs and</p> <p>7 they were investors in investment products of</p> <p>8 ours.</p> <p>9 Q. Mr. Merkin, the court reporter is</p> <p>10 handing you what's been previously marked as</p> <p>11 Trustee's 142. It's Bates number is BS00078912,</p> <p>12 ending at 916.</p> <p>13 Do you see on page 912 there's a</p> <p>14 reference to an interview on May 19th, 2004?</p> <p>15 Near the top of the page. There's a number 1,</p> <p>16 the interview on May 19th, 2004.</p> <p>17 A. I'm not sure I've seen this</p> <p>18 before. Do you have any idea that I have or --</p> <p>19 unless you want me to read the whole thing,</p> <p>20 which I don't mind doing, you have to point me</p> <p>21 at what you want me to read.</p> <p>22 Q. I'm just pointing you to the stop</p> <p>23 of the first page where it says the interview on</p> <p>24 May 19th, 2004.</p> <p>25 A. I see that caption, if that's the</p>
Page 611	Page 613
<p>1 known as Aozora Bank?</p> <p>2 A. Yes.</p> <p>3 Q. What is Aozora Bank?</p> <p>4 A. Aozora is a Japanese bank.</p> <p>5 Q. And was Aozora Bank an investor in</p> <p>6 Ascot Fund?</p> <p>7 A. Yes.</p> <p>8 Q. Were they also an investor in</p> <p>9 Ariel Fund?</p> <p>10 A. Yes.</p> <p>11 Q. And are you aware whether Aozora</p> <p>12 Bank had a representative with Spring Mountain</p> <p>13 Capital?</p> <p>14 A. I believe they did.</p> <p>15 Q. What is your understanding of that</p> <p>16 relationship?</p> <p>17 A. I think Spring Mountain Capital</p> <p>18 acted as an advisor to Aozora in the placement</p> <p>19 of funds with various money management</p> <p>20 strategies, hedge funds included, over a period</p> <p>21 of time.</p> <p>22 Q. I'm not sure if we actually have</p> <p>23 ever covered this, but did you have a</p> <p>24 relationship with Spring Mountain Capital?</p> <p>25 A. Yes.</p>	<p>1 right word for it.</p> <p>2 Q. And then below that do you see</p> <p>3 where it says "Inagaki-san, myself, Chris,</p> <p>4 Seiichiro met with Ezra to talk about Ariel Fund</p> <p>5 and Ascot Fund." Do you see that?</p> <p>6 A. Yes. Who is myself?</p> <p>7 Q. It's not entirely clear who the</p> <p>8 "myself" is, but do you know who -- well, one,</p> <p>9 do you remember having a meeting on May 19th,</p> <p>10 2004 with representatives of Aozora Bank?</p> <p>11 A. Not specifically, no.</p> <p>12 Q. Do you have any reason to doubt</p> <p>13 that such a meeting took place?</p> <p>14 A. No.</p> <p>15 Q. Do you know who Inagaki-san is, or</p> <p>16 Inagaki-san I believe it should be?</p> <p>17 A. I'm not sure.</p> <p>18 Q. And the Chris that's referenced</p> <p>19 here, do you know who that is?</p> <p>20 A. I'm not sure.</p> <p>21 Q. Could it be Chris Brody?</p> <p>22 A. I mean when you --</p> <p>23 (Interruption)</p> <p>24 A. Excuse me. Sorry, meant to leave</p> <p>25 this in the other room. Apologize. Let me see</p>

Page 634	Page 636
<p>1 Meaning we had, say, in Ariel Fund 2 for periods of the fund's history, quarterly 3 outs with 30 days prior redemptions. 30 days 4 notice, quarterly outs. 5 If you were doing, to take an 6 extreme, merger arbitrage, that was probably a 7 perfectly unmismatched of an asset with a 8 liability. The asset being the funds you 9 managed, the liabilities being the portfolios. 10 For the moment. 11 And so we did various things in 12 the portfolios and in the contractual agreements 13 with the investors to straighten out mismatches. 14 Introduced things like side pockets, required 15 all investor permission to do that. 16 The law changed at one point and 17 we made changes in the liquidity terms of the 18 investors to reflect changes in the law. The 19 law changed again. We reversed some of those in 20 one case, kept them in other cases. And tried 21 to be aware of the need for a pool of cash or a 22 pool of buying power that could be available 23 should we need it. 24 Q. I am going to hopefully move to my 25 last topic. We'll see if I can get you out of</p>	<p>1 A. I don't think I said quite that, 2 no. I think I said I don't think it was as high 3 as 120. I think it might have been something 4 closer to 110, 112, something like that. Across 5 the -- 6 Q. Across the defendant funds? 7 A. Right. 8 Q. The court reporter has handed you 9 what's been marked as Trustee's Exhibit 375. 10 What I would like to do is try to figure out 11 exactly where the exposure lies. 12 And let me say for the record 13 Trustee's 375 is Bates number GCC-P 0463582. It 14 is a native file, which is why the Bates number 15 doesn't appear on the document. 16 Mr. Merkin, do you recognize 17 Trustee's 375? 18 A. Does recognize mean have I seen 19 this before and therefore can recognize it? 20 Q. Yes. 21 A. I don't really know. It says it's 22 a list of the Ascot Partners LP investor capital 23 accounts. 24 Q. But you haven't seen this document 25 or another document like it before?</p>
Page 635	Page 637
<p>1 here in the next 20 minutes or so. 2 Let me get tab 8, 6, 7 and I guess 3 there should be 9. 4 MR. STEINER: But not 6, 7, 8 and 5 9? 6 A. This goes back to yesterday, 7 right, Brian? 8 MR. STEINER: Doesn't matter. 9 MR. SONG: Doesn't matter. It's 10 all one. 11 Q. Doesn't matter. 12 (Comments off the record.) 13 (Exhibit Trustee 375 marked for 14 identification.) 15 Q. Mr. Merkin, before we get to the 16 exhibit, you testified I believe yesterday 17 regarding personal exposure that you and your 18 family had through the defendant funds to BLMIS. 19 Do you recall that testimony? 20 A. I think I -- if I know what you 21 are referring to, not that I'm reading your mind 22 here, yes, I do. 23 Q. You said -- I believe you said 24 that you had somewhere 110, \$120 million in 25 exposure; is that right?</p>	<p>1 A. I'm not sure. I'm not sure I've 2 seen this document before. 3 Q. Okay. Could you turn to the last 4 page of the document. 5 A. The very last page of the 6 document? 7 Q. Yes. 8 A. Sure. Okay. 9 Q. Do you see that there's, at the 10 bottom of the page, certain entities that are 11 broken out from the other limited partners? 12 A. Yes. 13 Q. Is it your understanding that 14 these entities listed here are associated with 15 either you or your family? 16 A. You're talking about lines 234 to 17 238 or maybe I should say 240? 18 Q. Yes. 19 A. Yes. 20 Q. And the first one there is listed 21 as Hobby Farm. What is Hobby Farm? 22 A. It's some form of a family trust, 23 I think. 24 Q. Were you including Hobby Farm's 25 investment in Ascot Partners in the \$110</p>

Exhibit 85

ORIGINAL

1

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

-----X

IN THE MATTER OF

MADOFF CHARITIES INVESTIGATION

-----X

120 Broadway
New York, New York

January 30, 2009
10:02 a.m.

EXAMINATION UNDER OATH of J.

EZRA MERKIN, pursuant to Subpoena, held at
the above place, date and time, before
Alice Schulman, a Notary Public of the
State of New York.

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

J. E. Merkin

A. I believe.

Q. And describe how that came about.

A. We had had several conversations, meetings or telephone in which he described market making activities in his office and money management activities in his office.

He walked through a strategy that he was then interested in executing on behalf of clients, and the decision came about that it made sense to allocate some capital to him and invest some capital in those strategies.

Q. What was the strategy he described to you?

A. At that time the strategy involved the purchase of individual stocks, preponderantly the purchase of individual stocks, puts were beneath them and the puts were to be bought, the calls were to be sold and the stocks were to be bought. So you would long a stock, long a put option that would have a strike price

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

1 J. E. Merkin

2 beneath the price of that stock and short
3 a call that had a strike price above the
4 price of the stock.

5 The put and the call had the
6 same expiration dates, the options had the
7 same expiration dates.

8 Q. Is there a name associated with
9 that strategy?

10 A. If it's done on individual
11 stocks, it might be called a split strike
12 strategy. It might be called buying the
13 puts, writing the calls, something like
14 that.

15 Q. And had you done the strategy
16 yourself?

17 A. We had looked at options related
18 strategies and options arbitrage of
19 related strategies in which they thought
20 there may be some market inefficiencies
21 between premiums or premium on puts and
22 calls relative to stocks. I don't think
23 we had done much with it.

24 Q. And the split strike strategy,
25 is that one that stayed constant

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

J. E. Merkin

Q. Just to clarify, what I'm understanding you to say, and tell me if this is a fair characterization, the play in execution was for the vast most part in the option trading, and the option trading that was over-the-counter or unreportable?

A. If you permit me to edit what you said, I would take out vast. I would say for the most part, I'm not sure I would say the vast most part. That was formidable on his stocks.

Maybe this is worth a word or two. When you said Madoff was a legend, he was a legendary person, he was. I don't know if you were saying that seriously or facetiously.

MR. LEVANDER: We are talking about a legend of one kind pre December 11th.

A. Fair enough. You're talking about a guy who had a broker-dealer license for 38 years. You're talking about somebody who had massive market share. He was the guy that took on the

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

J. E. Merkin

New York Stock Exchange and eventually won. They had hegemony. He shed them of it. He did it by basically being a wholesale upstairs trader.

He would say to me routinely if I asked him regularly, which doesn't mean every time but reasonably frequently, what percentage of the New York Stock Exchange volume are you doing today. The answer was low teens, sometimes eight or nine.

At the beginning he was the source, he was the beneficiary of the Stock Exchange off-board trading room. So if you were a member firm, if you were Merrill Lynch, I'm picking on Merrill, it's not meant to be any specific example, you could not change New York Stock Exchange stocks other than through the floor, originally 24 hours a day, and then nine to four.

He didn't have a seat. He wasn't a member firm, so he could do the upstairs trading all day, every day. The 13 percent sounds like an incredibly high

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

J. E. Merkin

figure but it's really incredibly understated because that's the whole stock exchange trading in the 150 (check) names that he cared about he could be 40 percent of the volume.

When we were in the merger arbitrage business, okay, when there was just more to do in the merger arbitrage business, which has relevance to Bernie's strategy, we would occasionally get a name which was Bernie's name, Pfizer is buying Wyeth. If Wyeth was a name of Bernie's 150 names, he was 40 or 50 percent of the volume in the wholesale area, not in what we were doing together but in that incredible market making business he had, and that was the real legend.

And at the end of the Madoff investigation we'll find out if the market making business was for real or not real, but I bet you it was. This is just a hunch. That was where a lot of the executions came and it played off on options, that's where you really had

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

J. E. Merkin

the --

MR. LEVANDER: To put it in perspective, we have given you, among other things that we've given you, articles that were thrown into the due diligence file. And if you look at those articles in 1990, and I may be off, but I think this is right, the Wall Street Journal and New York Times said that five entities got together to create an electronic trading exchange. Those were Citi, which were Soloman Smith Barney, Merrill, Goldman Sachs, Morgan Stanley and Bernie Madoff. And that's the scope and stature he had in that business.

MR. CORNGOLD: I think we understand that.

MR. LEVANDER: Fine. I'm trying to be helpful.

A. I would only amend what Andy said. You look at him and tick off his fingers, those four were half the business, he was the other half. He

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

J. E. Merkin

wasn't 20 percent. Those four guys came to him and said would he like to do a joint venture on the market making side.

EXAMINATION BY

MR. SANGEAP:

Q. Was he a market maker in options?

A. I think the answer is yan, meaning yes and no. Bernie didn't boast much. Bernie claimed to me he had a very significant role in inventing the OEX.

If you know about the history of options, it would be a very big thing. I asked a couple of guys in Chicago, I said is this right or wrong, they said more right than wrong. This is all third-hand conversations. They don't mean a lot.

He had a significant volume in options that he was doing as a market maker, significant volume when the big board refused to let their floor specialists make markets in options in the names that they were specialists in at the same time.

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

J. E. Merkin

It was called side-by-side market making, and it was forbidden on the floor. For whatever policy reasons that I don't know, and the little I do know don't make a lot of sense. So when he had this, when the cartel gave him this opportunity, he sat and made options.

This goes back quite awhile, but I remember a visit to Bernie and his traders when he showed me what they called a Madoff screen which was a proprietary screen on which they spent fortunes every year upgrading and keeping up the same thing where they would show stocks and their options on the same screen. It was like a quarter panel that was the options screen, and they were making option markets in the options. But those were in stocks and not necessarily OEX's.

Later on, I mean later on the whole thing changed. Later on the off-board trading changed. Nothing stays that static in markets. The whole New York Stock Exchange thing, and that was a

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

J. E. Merkin

lot of conversations, where do changes in these markets bring the strategy.

Q. Just focussing on the last five years. Are you aware of whether Mr. Madoff made a market in --

A. OEX's?

Q. -- OEX's or the 100 stocks --

MR. LEVANDER: Let him finish his question.

Q. -- stock options?

A. I don't know for sure.

Q. Did you have any conversations with him concerning whether he made markets for S&P 100 options?

A. My most recent conversation with him about that subject, okay, was so near the end that I'm not sure today I believe anything said in, in the fourth quarter of '08. It was either October or November.

Q. What did he say in that conversation?

A. We had a conversation about the contraparty risk in the puts, what percentage of listed puts I was using

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400